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IN THE

Supreme Court of the United States

October Term, 1985

NORMAN OWENS, CLOID SHULER,
and GORDON FAULKNER,

Petitioners,

vs.

RICHARD A. FRENCH, MORRIS E. DOZIER,
MARTIN W. BRADBERRY, and HENRY C. JENNINGS,
on behalf of themselves and
all others similarly situated,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND APPENDIX

LINLEY E. PEARSON
Attorney General of Indiana

DAVID A. ARTHUR
Deputy Attorney General

Office of Attorney General
219 State House
Indianapolis, IN 46204-2794
Telephone: (317) 232-6332

Attorneys for Petitioners

Central Publishing Company, Inc., Indianapolis, IN 46206

QUESTIONS PRESENTED FOR REVIEW

I. Whether the decision of the Seventh Circuit is contrary to decisions of this Court in letting stand orders of the District Court that are unnecessary to the vindication of constitutional rights and which are further excessively intrusive into the affairs of state government and not narrowly directed to the conditions that the District Court found to be unconstitutional.

II. Whether the decision of the Seventh Circuit is contrary to decisions of this Court in affirming the District Court's order prescribing detailed procedures to be followed when it is necessary to use mechanical restraints against violent offenders in emergency situations.

III. Whether the decision of the Seventh Circuit is contrary to law in failing to address issues that were directly presented in the briefs and arguments.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND APPENDIX

Petitioners Norman Owens, Superintendent of the Indiana Reformatory, Cloid Shuler, Deputy Commissioner for Operations for the Indiana Department of Correction, and Gordon Faulkner, Commissioner of the Indiana Department of Correction, respectfully pray this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit (hereafter Seventh Circuit) entered in cause numbers 83-2280 and 85-1065 on November 26, 1985, which affirmed in part and reversed and remanded in part a decision of the

United States District Court for the Southern District of Indiana, Indianapolis Division (hereafter District Court).

Respondents are Richard A. French, Morris E. Dozier, Martin W. Bradberry, and Henry C. Jennings. The District Court certified a class of plaintiffs as all persons who are or may in the future be confined at the Indiana Reformatory.

OPINIONS BELOW

The decision of the Seventh Circuit issued on November 26, 1985, is reported at 777 F.2d 1259 (7th Cir. 1985), and is found in the Appendix beginning at page A-1. The first decision of the District Court is reported at 538 F.Supp. 910 (S.D. Ind. 1982), and is found in the Appendix beginning at page A-50. A preliminary injunction made permanent in the reported decision of the District Court is unreported and is found in the Appendix at page A-91. The second decision of the District Court entered on July 7, 1983, is unreported and is found in the Appendix at page A-45. The third decision of the District Court entered on December 14, 1984, is unreported and is found in the Appendix at page A-22.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254 and Rule 17 of the Rules of this Court.

The decision of the Seventh Circuit was entered on November 26, 1985, and rehearing with suggestion for rehearing en banc was denied on February 12, 1986. This petition is timely filed in that it is filed prior to the expiration of the ninety (90) day period from the denial of the petition for rehearing allowed by 28 U.S.C. §2102 (c) and Rule 20.2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the Constitution of the United States provides as follows:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the Constitution of the United States, Section One, provides, as follows:

> All persons born or naturalized in the United States, and all subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall made or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 United States Code 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, an Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

A. Nature of the Case

This petition arises from an affirmance in part, vacating in part, and remanding in part for further proceedings by the Seventh Circuit. This cause concerns a civil rights

action filed by offenders at the Indiana Reformatory and who challenged conditions, policies, and practices at that maximum security institution.

B. Course of Proceedings Below

This cause originated with the filing of a *pro se* complaint on November 21, 1975. The complaint was filed by four offenders then confined at the Reformatory. The defendants named were various state officials and employees. Plaintiffs proceeded *in forma pauperis*. Counsel for the offenders was obtained by the District Court.

On May 13, 1976, the amended class action complaint was filed, on behalf of the same four offenders. Named as defendants were the Superintendent of the Reformatory, the Executive Director of the Adult Authority for the Indiana Department of Correction, and the Commissioner of the Department. The persons in two of the three positions changed while the action was pending, and substitutions of the parties were requested and granted.

On October 6, 1977, Respondents filed their motion to determine propriety of class action. The District Court, on December 20, granted the motion and determined the class to be all persons who are or may in the future be confined at the Reformatory.

On March 10, 1978, the United States of America sought and was granted leave to participate as amicus curiae.

Respondents requested leave on March 14, 1978, to amend their complaint to assert the existence of pendent jurisdiction and to add claims under Article I, §18 of the Constitution of Indiana and under Indiana Code §11-1-1.1-26.

Evidence was heard on sixteen (16) days in July and August of 1978. Post-trial briefs, including reply briefs, were filed by Petitioners, Respondents, and the Amicus. All filings were completed by October 18, 1978.

The case was then taken under advisement.

On February 24, 1981, Respondents moved to re-open the record as to one of the living units at the Reformatory and as to the practice of mechanically restraining offenders. This motion was granted on February 25, 1981.

On March 1, 1982, the District Court took further evidence, both as to general conditions at the Reformatory and as to the two issues for which the record was re-opened.

On May 7, 1982, the District Court issued its memorandum of decision, containing its findings of fact and conclusions of law. The decision is reported as *French v. Owens*, 538 F.Supp. 910 (S.D. Ind. 1982), and is found in the Appendix beginning at page A-50. An order in twenty-two (22) rhetorical paragraphs was entered at the same time. This is found in the Appendix, beginning at page A-85. As part of the Order (¶19), the District Court made permanent a preliminary injunction that had been issued at the conclusion of the taking of testimony on March 5, 1982, and which concerned the use of mechanical restraints. The preliminary injunction is found in the Appendix, beginning at page A-91.

On May 17, 1982, Petitioners filed a motion to stay or to amend the order.

On June 4, 1982, Petitioners filed a notice of appeal. Appeal to the Seventh Circuit was attempted, but that appeal was dismissed by the Court as premature, in Cause No. 82-1875, due to the filing and pendency of the motion to amend.

The motion for stay or to amend the order remained pending before the District Court for thirteen months, until July 7, 1983, when the District Court amended paragraphs 2 and 3 of the order as to the date for compliance only, and amended paragraphs 9 and 11 of the order of May 7, 1982. In all other respects, the motion to stay or to amend was denied. A copy of the July 7, 1983, order of the District Court is found in the Appendix, beginning at page A-45.

Another appeal was taken to the Seventh Circuit by Petitioners. During the pendency of that appeal, and before oral argument was to be heard by the Seventh Circuit, Petitioners requested that the District Court grant them additional time to comply with certain orders relating to the prohibition on the use of double-decked bunk beds in dormitory areas and as to limits on institutional population. On the 30th day of August, 1984, the District Court entered an order indicating that it was "inclined" to grant the additional time but that it could not do so in light of the pendency of the appeal. Appendix, at page A-42. Thereafter, Petitioners sought a stay of the orders of the District Court pending decision of the fully briefed appeal, but the Seventh Circuit instead remanded the case to the District Court for determination of the requested enlargements of time.

On the 14th day of December, 1984, the District Court entered an amended order and memorandum. The order and memorandum are found in the Appendix beginning at pages A-36 and A-22, respectively. Petitioners again appealed to the Seventh Circuit, which consolidated all appeals and ordered supplemental briefing. Appendix, at page A-20.

On the 26th day of November, 1985, following argument, the Seventh Circuit entered its decision, affirming in part, reversing in part, and remanding in part the decision of the District Court. The decision is found in the Appendix beginning at page A-1. Petitioners timely petitioned (following the grant of an enlargement of time) the Seventh Circuit for rehearing, with suggestion for rehearing en banc. That petition was denied on the 12th day of February, 1986, with one judge voting to grant the petition. This ruling is found in the Appendix at page A-18.

C. Facts Material to the Consideration of the Questions Presented

The following is an overview of the facilities, programs, and operations of the Reformatory. The facts below are

quoted from or paraphrasing the findings of fact of the District Court.

1. The Institution

As described by the District Court:

> The Indiana Reformatory is a maximum security correctional facility housing adult male felons. It was built in 1923. The Reformatory property is surrounded on three sides by high walls, with the fourth side enclosed by the cellhouse building. There are some buildings outside the walls, including a dormitory for inmates and a farm operation. The Reformatory has 35 acres within its walls and 1,900 acres in the entire institution; few inmates are permitted outside the walls. Appendix, p. A-54.
>
> Inmates are housed in three cellhouses and two dormitory buildings inside the walls, and one dormitory located outside the walls.
>
> There are 297 usable cells in J cellhouse, 317 in H cellhouse, and 319 in G cellhouse. Each cellhouse consists of an inside cellblock, set back from the outside walls of the cellhouse. The cells are located back to back and are separated by a service area which runs the length of the cells and where wiring and plumbing are located. A row of cells on a particular tier is known as a range.
>
> The cells in G and H cellhouses contain 44 square feet, and cells in J cellhouse contain 47.6 square feet. The cells have three solid walls and a barred front. Each cell contains a sink with cold running water, an uncovered toilet, one or two lockers, and one or two beds. Appendix, p. A-55.
>
> [There is] a separate housing unit for inmates who are considered to require segregation from the general inmate population. This unit is known as administrative segregation or "A.S." This unit consists of 100 cells in two tiers, arranged back to back. There are 26 cells on the lower tier and 24 cells

on the upper tier in each section. The cells have the same size, appearance, and furnishings as the cells in the cellhouses.

One side of administrative segregation is used for inmates sent to the unit as discipline for infractions of Reformatory rules. (The "DLU".) The other side of the two-tier cellblock is used to house three types of inmates: those who are confined in segregation for their own protection (self-lock-up), those who are under investigation for violating an institutional rule, and pretrial detainees transferred to the Reformatory (safekeepers).

The unit known as isolation or the maximum restraint unit ("MRU") is on the ground floor of the administrative segregation building. The MRU is used to provide even more secure confinement than disciplinary segregation. Each of the cells in isolation has a barred door which is covered with mesh which is flush with the wall of the cell. There is also a solid metal door which has a 4" x 6" peephole as the only means of entrance of light. Appendix, p. A-57.

Besides the cellhouses, inmates are housed in several dormitory units, two located inside the walls and one located outside the walls. One inside dormitory is referred to as the K dormitory complex and consists of six separate rooms on two floors. All rooms are double bunked, and nearly all bunks are occupied.

The sizes of the dormitories and number of bunks in each are:

K-1 — 3,134 square feet — 48 bunks
K-2 — 1,892 square feet — 30 bunks
K-3 — 2,509 square feet — 48 bunks
K-4 — 2,509 square feet — 48 bunks
K-5 — 7,988 square feet — 112 bunks
K-6 — 6,438 square feet — 96 bunks

A part of the area in each room in K dormitory is a common area where tables are located for playing

cards, checkers, etc. Each room had one television set, and the two larger rooms have two. Appendix, pp. A-58 — A-59.

The other inside dormitory is called O dormitory. It contains one large room, O-1, and eight relatively small rooms. This space was not constructed for housing purposes, but has been converted for that use since 1978 because of the influx of new prisoners. O dormitory was opened May 1, 1981. The nine O rooms together contain 8,618 square feet of space, housing 210 persons. Fifty persons occupy 3,190 square feet in room O-1, while 160 persons are housed in the remaining 5,428 square feet. Appendix, p. A-59.

2. Recreation

For those inmates who are in the general population and have work or study assignments, recreation during good weather months is adequate. During this time of year they are afforded approximately 90 minutes of outdoor recreation per day, in addition to the time spent out of their cells at meals and at their jobs. the outdoor facilities include two baseball diamonds, an area for football or soccer, horseshoe pits, four handball courts, two basketball courts, a volleyball court, a shuffleboard area, and room for jogging.

In the winter months and on rainy days, however, exercise is limited to the so-called fieldhouse, which is the sole facility for indoor recreation. The fieldhouse contains a tiny gymnasium simultaneously used for basketball, weight-lifting, ping pong, punching bags, and television. There are four television sets hung above the bleachers, two on each side of the basketball floor. Appendix, pp. A-60 — A-61.

Persons in "idle-hold," for example, are presently allowed a 90 minute recreation period each weekday, and another hour every Saturday or Sunday. They are allowed 45 minutes for each meal, and are afforded a 10 minute shower period each night after the

recreation period. Otherwise, they are locked in their cells all day.

Prisoners on hold status are not permitted to visit the library (other than the law library) and are not permitted to check books out of the library. Appendix, pp. A-61 — A-62.

Those in administrative segregation ... [were] permitted to go to the gymnasium two days a week for a period from 8:00-10:30 a.m., and to the commissary once a week for 45 to 60 minutes. They are allowed to make one 5 to 10 minute phone call per month. Otherwise they are locked up all the time, including meal time, as their meals are brought to them and served in their cells. Those who are "red-tagged" are held in their cells 24 hours per day except for a shower. When the weather permits outside exercise, they are allowed 30 minutes per day in a small fenced area just outside the A.S. building. The area is about 30′ x 50′ and no equipment is furnished other than a basketball, checkers and a checkerboard.

Although the dormitories have television sets, none is available in the cellblocks. There is no day room space provided in the cellblocks. Appendix, p. A-62.

3. Medical Care

At the time of the second phase of the trial (i.e., March, 1982), the medical staff at the Reformatory consisted of one medical doctor, three physician assistants, and nine medical technicians. There was also one medical doctor, a urologist, who visited the Reformatory one evening per week. There were also two dentists, one pharmacist, two clerks, a part-time optometrist, and an infirmary administrator.

The District Court described the infirmary as follows:

The medical facility is contained in a separate two-story structure of brick construction within the walls. The first floor contains a sick call area, administrative offices, pharmacy, emergency room, dental

> department, segregation section, radiology unit and an unused kitchen. The basement and first floor hallway are used as a waiting area for those attending sick call. On the second floor, there is an infirmary section for in-patients consisting of a ward and rooms for medical isolation. There are also areas for laboratory and medical staff offices, but the laboratory is not in use. Appendix, p. A-62.

The District Court described general medical procedures as follows:

> Sick call for the administrative segregation and the MRU consists of a medical technician who goes to the cellhouse and communicates through the locked door. Dr. Choi walks through the area once a week but rarely examines the inmates. Those on hold status in the general population sign up on a sheet with the cellhouse clerk. A medical technician reviews the sheet and decides who should be given over-the-counter medications or called out to see the physician assistant, or some other option. Those in the general population group who have jobs sign out with their work supervisor and come to the infirmary where they are seen by a medical technician — a classification not recognized by Indiana laws. The medical technicians have had military corpsman training. This training emphasizes first aid but does not include physical diagnosis, which is part of the physician and physician assistant training program. Appendix, pp. A-64 — A-65.
>
> Inmates with minor ailments who require confinement to bed but no nursing care, for a short term are sent to the second floor infirmary at the institution. This room contains two rows of old beds. There is no mechanical ventilation, and no medical personnel are stationed in the ward.
>
> Inmates with significant illness or injury requiring more specialized physician consultation or care or skilled nursing are transported to the Wishard Memorial Hospital, a unit of the Indiana University

> Medical Center. Transportation is provided for by van or an ambulance and usually involves about 40 minutes of travel. There are usually, at any one time, approximately 10 to 12 patients from the Department of Corrections retained at this hospital. Wishard also provides all types of outpatient consultation and during an average week the Reformatory may send 10 to 15 patients to Indianapolis for this purpose. In some instances where nearer facilities are necessary, hospitalization is utilized in nearby Anderson, Indiana. Appendix, p. A-65.

At the time of the 1982 phase of the trial, the mental health care staff consisted of one full-time clinical psychologist, one full-time masters level behavioral clinician, one consulting psychiatrist for three hours per week, and one consulting psychologist for eight hours per week to conduct individual counseling and group therapy. Appendix, p. A-63.

4. Education

The District Court described academic and vocational education as follows:

> The educational programs at the Reformatory consist of Adult Basic Education (A.B.E.), General Equivalency Degree (G.E.D.), and college correspondence courses. Some college courses are taught inside the Reformatory by professors from Ball State University. All A.B.E. and G.E.D. instruction is at state expense. Inmates in protective custody are not able to participate in educational programs, except for correspondence courses.
>
> An associate degree can be obtained in Liberal Arts, Legal Assistance, Business Administration, or Criminal Justice upon successful completion of a two year program. Inmates must pay at least part of the cost of tuition, fees and books of the college programs. Since inmates in educational programs are paid 40 cents per day, the lowest inmate pay rate at the

Reformatory, many inmates cannot participate in the college programs because of inability to pay.

The library is open from 9:30 a.m. to 7:30 p.m., except during meal times. However, as previously stated, those on idle-hold status are not permitted to use it. Those on self-lockup are likewise not permitted to go to the library, but may have books delivered to their cells. Appendix, pp. A-69 — A-70.

There are twelve factories or shops in the Industries Division, which include five wooden furniture factories, a metal furniture factory, and a dry kiln, a freight house, a mattress factory, a sign shop, a tag shop, and a tailor shop. They presently employ 230 inmates, which is 30 more than the authorized number of positions.

There are 13 different vocational shops, down from 15 in 1978, which teach such skills as auto body work, upholstery, printing, bricklaying, welding, etc. These programs take anywhere from four months to one year to complete, and there are no advanced courses available. Inmates who have completed vocational training in one area are discouraged from taking courses in any other area. There are 136 inmates in these programs.... Appendix, p. A-70.

5. Fire Safety

The District Court found that:

The last report of the State Fire Marshall in evidence, dated July 20, 1981, listed 122 separate remedial activities necessary to place all buildings and procedures in compliance with state fire laws and regulations. Appendix, p. A-72.

6. Food Services

The District Court described food services at the Reformatory as follows:

Meals for the general population are served three times a day in a central dining room or mess hall, and

are based upon a master menu cycle of five weeks. The menus provide adequate variety and sufficiently meet nutritional standards. The inmates eat with plastic utensils.

Those inmates confined in the various segregation units are fed the same diet as those in the general population, and the food is prepared in the same kitchen. Food is served to these inmates in their cells, after being heated on a hot cart at the unit. However, there is no dietician on the staff, and those inmates who require special diets, such a diabetics, must rely on the food service manager and an inmate assigned to this task. Appendix, pp. A-72 — A-73.

7. Environmental Health

The District Court found several potential health problems in the food service and storage areas. By July 7, 1983, these problems were resolved due to a rehabilitation project for which funds were appropriated prior to the second phase of trial and resulting judgment. Appendix, p. A-46.

The District Court found that roaches and rodents were "under control" in living areas, but that unscreened windows allowed flies, flying insects, and birds into the areas. The District Court also found the plumbing chases to be "dirty." Offenders are not to be in the plumbing chases. Appendix, p. A-74.

8. Protection of Offenders

The District Court concluded that "[s]ecurity of inmates from physical attacks by other inmates is a problem at the Reformatory", but pointed to no specific facts or incidents to support its conclusion. Appendix, pp. A-75 — A-77.

REASONS FOR ALLOWANCE OF THE WRIT

I.

THE DECISION OF THE SEVENTH CIRCUIT IS CONTRARY TO DECISIONS OF THIS COURT IN LETTING STAND ORDERS OF THE DISTRICT COURT THAT ARE UNNECESSARY TO THE VINDICATION OF CONSTITUTIONAL RIGHTS AND WHICH ARE FURTHER EXCESSIVELY INTRUSIVE INTO THE AFFAIRS OF STATE GOVERNMENT AND NOT NARROWLY DIRECTED TO THE CONDITIONS THAT THE DISTRICT COURT FOUND TO BE UNCONSTITUTIONAL

In 1981 this Court decided *Rhodes v. Chapman*, 452 U.S. 337 (1981), considering "for the first time the limitation that the Eighth Amendment...imposes upon the conditions in which a State may confine those convicted of crimes." *Id.* at 344-45. The specific question in *Rhodes* was "whether the housing of two inmates in a single cell...is cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments." *Id.* at 342. That question, answered by this Court in the negative, is directly relevant to the issues pertaining to crowded conditions raised in the instant cause. In *Rhodes* the issue was determined in regard to a relatively new prison. This Court has not yet reviewed the applicability and effect of the Eighth Amendment in terms of an older correctional institution, such as the Indiana Reformatory.

In *Rhodes*, the lower courts had held that double-celling constituted cruel and unusual punishment prohibited by the Eighth Amendment. *See Chapman v. Rhodes*, 434 F.Supp. 1007 (S.D. Ohio 1977), *aff'd*, 624 F.2d 1099 (6th Cir. 1980). This Court reversed, reasoning that the Eighth Amendment prohibits only those punishments that "'involve the unnecessary and wanton infliction of pain'... or are grossly disproportionate to the severity of the

crime . . . ." *Id.* at 346 (citations omitted). It was concluded that overcrowding or double-celling does not contravene that prohibition.

A central message of *Rhodes* is that the Eighth Amendment does not proscribe prison conditions that do not, directly or indirectly, result in the infliction of actual, physical pain. Mere discomfort, frustration, or distress are not, in this context, matters of constitutional moment. "To the extent that [prison] conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society . . . . [T]he Constitution does not mandate comfortable prisons, and prisons . . . which house persons convicted of serious crimes, cannot be free of discomfort." *Id.* at 347, 349, and 349 n.14.

"[S]erious deprivations of basic human needs," *id.* at 347, may be unconstitutional to the extent that they cause or lead to "pain without any penological purpose." *Id.* On the other hand, merely "psychological problems . . . [such as] an increase in tension and aggression," *id.* at 349 n.15, were treated as constitutionally insignificant.

The decision in *Rhodes* emphasized that judgments respecting prison conditions must be informed by "objective factors" and reflect "objective indicia," *id.* at 346 (citations omitted), and that "Eighth Amendment judgments should neither be nor appear to be merely the subjective views' of judges." *Id.* at 346, *quoting Rummel v. Estelle*, 445 U.S. 263, 275 (1980). This Court instructed the federal courts to refrain from imposing their own views of prison administration on the states, absent clear constitutional violations stemming from objective factors.

> [T]hese considerations properly are weighed by the legislature and prison administration rather than a court . . . . [C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system.

Id. at 350.

In particular, this Court has admonished the federal courts that "a prison's internal security is peculiarly a matter normally left to the discretion of prison administrators." *Id.* at 349. "To the extent that [prison] conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for offenses against society...." *Id.* at 349. As was further observed in *Atiyeh v. Capps*, 449 U.S. 1312, 1315-16 (1981) (Rehnquist, J., in chambers), "nobody promised [convicted felons] a rose garden; and I know of nothing in the Eighth Amendment which requires that they be housed in a manner most pleasing to them, or considered even by most knowledgeable penal authorities to be likely to avoid confrontations, psychological depression, and the like."

This Court has never held an institution to be constitutionally overcrowded. In both *Rhodes v. Chapman* and *Bell v. Wolfish*, 411 U.S. 520 (1979) this Court specifically rejected the notion that double-celling or overcrowding is a constitutional violation *per se*. In both *Bell* and *Rhodes*, this Court upheld as constitutionally permissible double-celling that resulted in the allocation of less than 40 square feet of living space per prisoner. *See also Hite v. Leeke*, 564 F.2d 670, 673-75 (4th Cir. 1977) (double-celling in 65 square foot cells held constitutional); *Crowe v. Leeke*, 540 F.2d 740, 742 (4th Cir. 1976) (triple-celling in 63 square foot cells held constitutional); *Burks v. Walsh*, 461 F.Supp. 454, 489-90 (W.D. Mo. 1978), *aff'd. sub. nom. Burks v. Teasdale*, 603 F.2d 59 (8th Cir. 1979) (double-celling in 49 square foot cells held constitutional); *MCI Concord Advisory Board v. Hall*, 447 F.Supp. 398 (D. Mass. 1978) (double-celling in 66 square foot cells held constitutional); *West v. Edwards*, 439 F.Supp. 722 (D. S.C. 1977) (triple-celling in 66 square foot cells held constitutional).

This Court has emphasized that a finding of unconstitutionality may be predicated *only* upon a showing of precisely that "concrete injury" that the District Court and Seventh Circuit treated as irrelevant. Crowded

conditions violate the Eighth Amendment only where there is "evidence that [the specific] double-celling [or crowded condition] . . . either inflicts unnecessary or wanton pain or is grossly disproportionate to the severity of crimes warranting imprisonment." *Rhodes v. Chapman*, 452 U.S. at 347. The conditions at the Reformatory are less than ideal; but, there is no evidence or finding that conditions at the Reformatory cause the actual, physical pain with which this Court was concerned in *Rhodes v. Chapman* or that conditions constitute grossly disproportionate punishment.

The District Court's negative findings with regard to housing concern ventilation, lighting, shower times, public health standards, and toilets. None of these findings is tied — by the District Court, by the Seventh Circuit, or in fact — to the population level, to double-celling, or to double-bunking — with the exception of the constitutionally irrelevant public health standards.

The issues of the use of double-decked bunk beds in dormitory areas and population go hand in hand. The issue of double-celling is clearly also involved, but for purposes of this facet of the issue and to show that these can be treated separately, it will be assumed (without conceding) for purposes of this issue that double-celling is not allowed.

Looking at the square footage provided each offender assigned to a dormitory under the order of the District Court shows the error of the District Court and the Seventh Circuit under the guidelines of this Court.

With the population limit imposed by the District Court, the number of offenders in an inside dormitory setting would be 178. The total for the two inside dormitories is 33,088 square feet. Therefore, the square footage per offender in K and O Dormitories would be almost 186 square feet.

Even if the population of the outside dormitory (130, as stipulated to the District Court) were reduced by one half due to a prohibition of the use of double-decked bunk beds,

the number of offenders in a dormitory setting within the walls would be 243 and the square footage per offender would be more than 136.

These figures are so far greater than any standard that has ever been applied by this Court or by any other Circuit Court of Appeals (including such standards as those suggested by the American Correctional Association) that certiorari must be granted to bring the orders of the District Court and Seventh Circuit in line with *constitutional* requirements and to bring the decision within standards recognized by this Court and in line with decisions of other Circuits on the same issue.

The decision of the Seventh Circuit misapprehends and misstates the facts as to the assignment of two offenders to the same cell, affecting it's review of the constitutionality of that practice at the Indiana Reformatory. The Seventh Circuit stated that offenders who are double-celled remain in their cells for twenty to twenty-three hours per day. That is simply not the case. The District Court found that offenders in protective custody might be in their cells for up to twenty-three hours per day, a situation made necessary by reason of their self-imposed status, but offenders in the general population of the Reformatory are out of their cells for a substantial part of their day. Because the constitutionality of double-celling depends upon both the time that the cell is occupied by two offenders and the size of the cell under the applicable decisions of this Court, and because of the incorrect proposition in the opinion that all double-celled offenders spend almost the entire day in the cell, certiorari should be granted on this point to secure compliance with the standards set by this Court applied to the correct facts.

Neither *Rhodes* nor *Bell* set any minimum requirements under which double-celling is permissible. Each held that under the facts of the case, no constitutional violation was present. The issue in each was how the situation was managed. It is appropriately managed and administered at

the Reformatory, and therefore no constitutional violation is present under the decisions of this Court. The most that the evidence shows is that double-celling is uncomfortable or inconvenient. Neither comfort nor convenience is mandated by the Constitution. *Bell v. Wolfish, supra.* There is no evidence of pervasive violence between cell partners, as one would expect. There is not the concrete injury that this Court would require for a finding that a constitutional violation is present.

The facts of this case are legally identical to those in *Smith v. Fairman*, 690 F.2d 122 (7th Cir. 1982), *cert. denied* 461 U.S. 946 (1984), but the Seventh Circuit came to a directly opposite conclusion. While the available floor space at the Reformatory is approximately 22 to 23 square feet, the cells in *Smith v. Fairman* had as little as nine (9) square feet of floor space available. As at the Reformatory, some offenders in *Smith* spent most of their days in their cells. Despite the virtual identity of facts in two cases before the same court, the Seventh Circuit declined to rule consistently. Therefore, this Court should grant certiorari to secure conformity among decisions within the Seventh Circuit itself.

The remedies actually ordered in this case reveal a total disregard for sound notions of judicial restraint and for this Court's prudently adopted limitations on the proper role of the judiciary in matters of prison administration. The District Court and the Seventh Circuit clearly violated the dictate that judgments in cases such as this must "spring from constitutional requirements ... rather than a court's idea of how best to operate a detention facility." *Bell v. Wolfish*, 411 U.S. at 539.

The District Court's order affirmed by the Seventh Circuit is an order that grants double remedies to cure violations found. The Seventh Circuit, in its decision, did not address this issue as presented by the Petitioners, but tacitly accepted the position of the Respondents that whenever a violation is found the door is thereby opened to

the District Court to order extensive relief — a position that is clearly contrary to existing precedent.

To be more specific, the Seventh Circuit did not reverse, vacate, or modify either the order to reduce the population at the Reformatory or the orders directed to the conditions that led the District Court to conclude that the Reformatory is unconstitutionally overcrowded. Thus, the District Court's order, which addresses both the population and the conditions upon which the conclusion of unconstitutional overcrowding is based, was upheld. When an institution is determined to be unconstitutionally overcrowded due to the existence of certain conditions, and each of those conditions is eliminated, then the institution can no longer be unconstitutionally overcrowded. Unconstitutional overcrowding cannot be both cause and effect.

Instead of affirming *both* the order to reduce population *and* the orders directed to specific conditions, the Seventh Circuit should have directed the District Court to allow the Petitioners to suggest or chose a remedy appropriate to the conditions. The formulation of the specific remedy must be left to the informed determination of the officials. *See Jones v. North Carolina Prisoners' Union*, 433 U.S. 119, 132-33 (1977). Otherwise, the federal courts are handing down judgments that not only appear to be but are, in fact, their own views of how best to operate a prison. *Cf. Rhodes v. Chapman*, 452 U.S. at 346.

If, as the Seventh Circuit found, the Reformatory is unconstitutionally overcrowded because of deficiencies in certain areas, it follows that when the deficiencies are eliminated the institution will not be unconstitutionally overcrowded, and any remedy that is ordered must be narrowly confined to rectifying the unconstitutional condition. The population reduction is a perpetual injunction, as are the orders pertaining to staffing, safety, medical care, and the kitchen and dining room. Thus, the bases upon which the institution was found to be

unconstitutionally overcrowded will be eliminated *and* the population will be forever reduced as well. Remedies must be narrowly tailored to the violation found. *Rhodes v. Chapman*, 452 U.S. at 351. The choice as to the particular course of action as between two or more courses that will lead to the same result (*i.e.*, constitutional conditions) must be left to the prison administrators, who are more informed as to the minutiae of the daily operation of a prison. *Cf. Bell v. Wolfish*, 411 U.S. at 545-46.

The decision of the Seventh Circuit is in conflict with recent decisions of the Third, Fifth, and Ninth Circuits, *Union County Jail Inmates v. DiBuono*, 713 F.2d 984 (3rd Cir. 1983), *cert. denied* U.S., 104 S.Ct. 1600; *Ruiz v. Estelle*, 579 F.2d 1115 (5th Cir. 1982), *cert. denied* 460 U.S. 1042 (1983); and, *Wright v. Rushen*, 642 F.2d 1129 (9th Cir. 1981). In each of these cases, the Courts held that the proper method by which the federal courts are to proceed is by determining the least intrusive method necessary to eliminate unconstitutional conditions.

This Court should grant certiorari to address the issues of the proper standard for determining whether an older correctional facility is constitutionally overcrowded and the scope of relief to be ordered if a violation is found, and to resolve the lack of uniformity among the Circuits.

II.

THE DECISION OF THE SEVENTH CIRCUIT IS CONTRARY TO DECISIONS OF THIS COURT IN AFFIRMING THE ORDER PRESCRIBING DETAILED PROCEDURES TO BE FOLLOWED WHEN IT IS NECESSARY TO USE MECHANICAL RESTRAINTS AGAINST VIOLENT OFFENDERS IN EMERGENCY SITUATIONS

The decision of the Seventh Circuit is contrary to law in affirming the District Court's order prescribing detailed

procedures to be followed when it is necessary to use mechanical restraints against violent maximum security prisoners.

In its order of May, 1982, the District Court made permanent a preliminary injunction issued at the close of the evidence on March 5. That permanent injunction merely incorporates the terms of the preliminary injunction and makes it permanent. It has not been modified in any of the subsequent decisions of the District Court, and was not modified by the Seventh Circuit.

Testimony indicated that it is sometimes necessary for restraints to be used on unruly, dangerous, destructive, psychiatric or violent offenders in hospitals or mental health settings for the protection of the offender or patients. Tr. pp. 17-151, 19-87, 20-34. Law enforcement and correctional personnel have found it necessary to use soft and hard restraints on offenders who are dangerous, aggressive, violent, and a threat to themselves and others.

The Department of Correction must have the ability to manage disruptive and violent offenders and the flexibility to respond to innumerable fact situations that cannot be contemplated by any court order seeking to impose arbitrary, unreasonable standards, time tables, and definitions. This is why courts are precluded from delving into the daily decisions of correctional institutions. *Bell v. Wolfish*, 411 U.S. at 545-46.

The Petitioners recognize that the authority to use mechanical restraints should be restricted to the highest level of the administration of the facility, and that proper documentation is necessary and reasonable. However, the artificial, unworkable requirements of the District Court constitute an unwarranted intrusion into the minutiae of the daily operation of a maximum security facility having no precedent in the law, and none is cited by the District Court. Setting arbitrary requirements on the use of mechanical restraints in a maximum security institution,

on the tacit assumption that every person to whom restraints are applied must be psychiatrically disturbed, is overly and artificially restrictive, will cause either the failure to restrain or premature release of violent offenders, and has no basis in law or fact. This is an issue that has never been but should be addressed by this Court.

The Department of Correction has a valid policy providing appropriate safeguards for the use of mechanical restraints. This policy was totally ignored by the District Court and by the Seventh Circuit. These procedures would fully insure that the policy is properly implemented with reasonable safeguards. The District Court's procedure causes an unnecessary reliance on forced medication to control violent behavior, will increase the cost of staffing, will cause staff and offenders to be injured, and precludes the state from taking measures that are necessary in an emergency.

In affirming the order of the District Court, the Seventh Circuit allowed the mandate of specific remedies rather than determining that a violation exists and directing the prison administrators to remedy the violation. The District Court is intruding into the daily operations of a state maximum security correctional institution without regard to the nature of the institution or to the security and control necessary to the maintenance of such an institution, contrary to the directions of this Court. In fact, the Seventh Circuit recognized as much in "encouraging" the District Court to allow for more flexibility in the future, but only after a showing by the Petitioners that such flexibility is warranted. The burden was shifted onto the Petitioners to show absence of need for intrusive measures rather than remaining on the Respondents to show the necessity.

Despite the presentation of specific challenges to virtually every specific provision of the order, and despite the fact that these same challenges have already been presented to and rejected by the District Court, the Seventh Circuit did not address the merits of the order, relegating

Petitioners to future modification of the order by the District Court. The District Court had already refused on several occasions to modify its order. This Court should take cognizance of the specificity with which the order is drawn and of its restrictive impact on correctional management, especially in light of the fact that the issue of the use of mechanical restraints on prisoners in a maximum security institution and outside of a mental health context is a case of first impression in this Court.

The District Court exceeded its authority by directly ordering a procedural remedy that restricts the effective management of dangerous and violent offenders. A person who is injuring himself or others, or who is destroying plumbing fixtures in his cell and thereby flooding other offenders" cells, may not be restrained unless detailed, costly, and elaborate procedures are followed. Correctional managers must have considerable leeway in dealing with emergency situtations, especially in a maximum security area of a maximum security institution. *Whitley v. Albers*, U.S., 106 S.Ct. 1078 (1986).

The order on mechanical restraints severely inhibits the ability of Reformatory staff to manage violent offenders. The discretion that is absolutely essential to deal with the multitude of factual situations presented — which discretion is present in the Department's policy — is lacking, seriously jeopardizing the safety and security of the institution.

III.

THE DECISION OF THE SEVENTH CIRCUIT IS CONTRARY TO LAW IN FAILING TO ADDRESS THE ISSUES OF: (1) THE PROPRIETY OF THE USE OF DOUBLE-DECKED BUNK BEDS IN DORMITORY AREAS OF THE INDIANA REFORMATORY; (2) THE ORDER TO REDUCE THE POPULATION AT THE REFORMATORY; AND, (3) THE ORDER AS TO THE HEALTH CARE FACILITY OF THE REFORMATORY, WHICH ISSUES WERE DIRECTLY PRESENTED IN THE BRIEFS AND ARGUMENTS

This issue is apparent in the records. Each of these issues was directly presented to the Court by way of the briefs. The opinion of the Seventh Circuit does not address these issues. Therefore, certiorari should be granted to address these central and important issues on which the Seventh Circuit has abdicated its responsibility to rule; and, to secure compliance with the mandates of this Court.

CONCLUSION

For the foregoing reasons, it is respectfully urged that certiorari be granted to review the decision of the United States Court of Appeals for the Seventh Circuit, and to reverse the decision of that Court.

Respectfully submitted,

LINLEY E. PEARSON
Attorney General of Indiana

DAVID A. ARTHUR
Deputy Attorney General

Attorneys for Petitioners

Appendix

In the

United States Court of Appeals

For the Seventh Circuit

No. 83-2280

RICHARD A. FRENCH, *et al.*,

Plaintiffs-Appellees,

v.

NORMAN G. OWENS, *et al.*,

Defendants-Appellants.

No. 85-1065

RICHARD A. FRENCH, *et al.*,

Plaintiffs-Appellees,

v.

NORMAN G. OWENS, *et al.*,

Defendants-Appellants,

UNITED STATES OF AMERICA,

Amicus Curiae.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 75 C 677—**S. Hugh Dillin**, *Judge.*

ARGUED APRIL 5, 1985—DECIDED NOVEMBER 26, 1985

Before CUDAHY and ESCHBACH, *Circuit Judges*, and MORTON, *Senior District Judge.**

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* The Honorable L. Clure Morton, Senior District Judge of the Middle District of Tennessee, sitting by designation.

CUDAHY, *Circuit Judge.* This is an appeal from an order of the United States District Court for the Southern District of Indiana requiring extensive reforms at the Indiana Reformatory at Pendleton, Indiana. Defendants, officials of the Reformatory, allege on appeal that the court erred in finding constitutional violations and exceeded its authority in issuing a detailed injunction. We have reviewed the order and affirm most of its provisions. We vacate with respect to several provisions and remand to the district court for further consideration.

I.

Four prisoners at the Indiana Reformatory at Pendleton ("the Reformatory" or "Pendleton") filed a class action suit under 42 U.S.C. § 1983 on behalf of all persons who are or will be in the facility. The suit complained of overcrowding and of the prison's use of mechanical restraints. It protested poor medical care and food, inadequate recreation, discrimination against those in protective custody, insufficient safety personnel and noncompliance with fire and occupational safety standards. After a 16-day trial, the district judge, exercising his pendent jurisdiction, found that many of these conditions violated various provisions of Indiana law. He also found that the practice of double-celling, in concert with other overcrowded and unsanitary conditions, violated the eighth and fourteenth amendments of the United States Constitution. *French v. Owens*, 538 F. Supp. 910 (S.D. Ind. 1982). Therefore, he issued a permanent injunction ordering detailed changes.

Defendants appealed. While the appeal was before this court, the Supreme Court decided *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89 (1984), which held that under the eleventh amendment, federal courts lacked jurisdiction over claims for injunctive relief against state officials based upon state law. In light of *Pennhurst*, we remanded this case to the district court so it could consider whether the conditions that it had found violated state law also violated federal law.

On remand, the court found that most of the conditions which violated state law, offended the eighth amendment as well. It therefore issued an amended order. That order also accounted for improvements that had been made at the facility over the two-year period since conditions had originally been considered.

Defendants again appeal. The United States has filed an amicus brief stating its position in detail on the various alleged violations and on the remedies prescribed.

II.

"In analyzing a challenge to prison conditions based on the Eighth Amendment, a court should examine each challenged condition of confinement . . . to determine whether that condition is compatible with the 'evolving standards of decency that mark the progress of a maturing society.' " *Wright v. Rushen*, 642 F.2d 1129, 1133 (9th Cir. 1981) (*quoting Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion)). We therefore examine the specifics of Judge Dillin's order to determine if there have been violations of the eighth amendment and, if so, whether the remedy is appropriate.[1]

A. Double-Celling

Built in 1923, by 1982 the Pendleton reformatory housed almost 2,000 prisoners, over twice its intended capacity. To accommodate the rise in population, prison officials placed two prisoners in cells that were intended for one. More than one-third of all cells were converted to double cells. After reviewing the record and personally visiting the prison site, Judge Dillin concluded that "rampant"

[1] Judge Dillin offered an excellent and thorough description of conditions at Pendleton. *See French v. Owens*, 538 F. Supp. 910 (S.D. Ind. 1982). We, therefore, need not rehash the facts of the case at length but instead touch on them only as they are important in explaining our result.

double celling, in conjunction with general conditions of overcrowding, violated the eighth and fourteenth amendments.[2]

By 1982, the gross available space per man in the double cells was 24 square feet, the net amount approximately half that. In the Administrative Segregation Unit—where prisoners are kept who need to be separated from the general inmate population—the ceilings are lower and inmates on the top bunks of double cells are unable to sit up. There is no space for a chair on the floor. As a result, some have developed back problems.

The forty per cent of prisoners in double cells spend between 20 and 23 hours per day in these cells. The five per cent of inmates in protective custody leave their cells only for showers, visits and twice-weekly recreation.

Deplorable conditions exist beyond the double-celling problem. All cells and dormitories are inadequately ventilated. There is no means of distributing heat to the cells and, in summertime, no system for circulating air to the cells. Rooms are dirty and odorous. Toilets and lavatories are "virtually uncleanable." Lighting is poor. Cells have no hot water.

Especially in light of the poor supervision, safety, medical care and food preparation at the facility, Judge Dillin found the conditions intolerable. He ordered that the population be reduced to 1,615 and enjoined double celling.

As the district court acknowledged, the mere practice of double celling is not *per se* unconstitutional. In *Rhodes v. Chapman*, 452 U.S. 337 (1981), the Supreme Court upheld its use in some instances. The institution at issue in *Rhodes*, however, was described as a "top-flight, first class facility." *Id.* at 341. It had been built in the 1970s.

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[2] The eighth amendment is applicable to the state through the fourteenth amendment. *Robinson v. California*, 370 U.S. 660 (1962).

Prisoners there shared double cells of 63 square feet, one-third larger than the cells at Pendleton. Each cell contained a night stand and shelf and radio unit. All cells had hot water. Similarly, this court upheld the use of double celling at the State Prison at Pontiac, Illinois in *Smith v. Fairman*, 690 F.2d 122 (1982), *cert. denied*, 461 U.S. 946 (1983). Pontiac's double cells ranged in size from 55 to 65 square feet, giving prisoners there 20 to 35 per cent more space than their Pendleton counterparts. Most of the cells at the Pontiac facility were "neat and clean" and much of the crowding in prisoners' cells was due to the inmates' books, records, stereos and electronic equipment. Food at Pontiac was found to be nutritious and wholesome. Violence had dramatically declined and medical care was found adequate.

While these institutions passed constitutional muster, the *Rhodes* court noted that prison conditions could be cruel and unusual when they "deprive inmates of the minimal civilized measure of life's necessities," 452 U.S. at 347, or when they result in punishments that " 'involve the unnecessary and wanton infliction of pain' or are grossly disproportionate to the severity of the crime." *Id.* at 346 (citations omitted).

In this circuit, we determine whether there have been "serious deprivations of basic human needs," *id.* at 347, by examining the "totality of conditions of confinement." *Madyun v. Thompson*, 657 F.2d 868, 874 (7th Cir. 1981). In this light, the picture painted of Pendleton is very different from that seen in *Smith* or *Rhodes*, from the lack of space and furnishings, to the unwholesome food, medical neglect and continuous threats to prisoners' safety. We agree that such conditions constitute cruel and unusual punishment. *See Toussaint v. Yockey*, 722 F.2d 1490, 1492 (9th Cir. 1984) (injunction upheld against double celling where it "engender[s] violence, tension and psychological problems"); *Wellman v. Faulkner*, 715 F.2d 269 (7th Cir. 1983), *cert. denied*, ____ U.S. ____; 104 S.Ct. 3587 (1984) (overcrowding can violate eighth amendment).

On appeal, defendants contend that even if the conditions were cruel and unusual, the district court's remedy was too broad. They assert that if the population is reduced, there should be no need to ban double celling.

At this time we disagree. The district court has broad powers to forge an adequate remedy to permanently correct any constitutional violation. As the Supreme Court has stated, "once a constitutional violation is demonstrated, the scope of the district court's equitable powers to remedy past wrongs is broad, for breadth is inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15, (1971). Here, where there was narrowly cramped double celling as a feature of severely overcrowded, unsafe and unsanitary conditions, we cannot conclude that the district court exceeded its broad remedial power. Under present conditions, a complete ban on double celling is fully justified. However, since double celling is not *per se* unconstitutional, if the Indiana prison system eliminates the severe overcrowding at Pendleton and the pernicious evils that accompany it, the state can at a later date seek some modification of the ban on double celling. If adequate reasons were shown and overall conditions warrant, such a request would, of course, be entitled to consideration.

B. Mechanical Restraints

Plaintiffs also complained that the use of mechanical restraints at Pendleton was unconstitutional. Mechanical restraint was employed against those who threatened suicide or were physically disruptive. Between January 1980 and January 1982, mechanical restraint was used 84 times. Prisoners were often chained for between 12 and 24 hours, with instances recorded of up to 2½ days. Those restrained were usually chained spread-eagled to their bed, their limbs secured by hard shackles. Often they were stripped. Sometimes the mattress was removed from the bed frame. These prisoners were frequently denied the right to use the toilet and had to lie in their own filth. At least one

prisoner suffered permanent nerve damage to his wrists from lying in shackles.

Appalled by this catalogue of inhumanities, the district court issued broad and detailed restrictions on the further use of hard shackles and ordered that mechanical restraint not be used as a form of punishment. It confined the use of restraint to the infirmary and allowed its use only when the superintendent of the prison or his substitute approved. The court required psychiatric approval for the use of restraint. The institution can restrain prisoners only for two hours before receiving the approval of a psychiatrist. During the period of restraint, trained medical personnel must constantly supervise the prisoner. Every 12 hours a psychiatrist must review the need for further restraint. Those in need of restraint beyond 24 hours must be sent to a psychiatric hospital. Inmates must be released at least every four hours to use the toilet and must be kept in proper clothing.

Defendants object that the district court based its conclusion on insufficient findings of fact and determinations of law and that the court's lengthy order was without authority because it restrained "the effective management of dangerous and violent offenders." (Defendant's brief at 33). We disagree.

The court was clearly within its right to enjoin such "outmoded and inhuman" practices. *Landman v. Royster*, 333 F. Supp. 621, 648 (E.D. Va. 1971). The image of individuals shackled naked for days to a metal bed frame is a sad reminder of the "soul chilling inhumanity of conditions in America's prisons." *Rhodes v. Chapman*, 452 U.S. 337, 354 (1981). While some form of temporary restraint may be necessary against those who pose a threat to themselves and others, Pendleton's methods are "too close to the rack and the screw to permit of constitutional differentiation." *Rochin v. California*, 342 U.S. 165, 172 (1952). Other courts have found such practices to be cruel and unusual punishment. *See Stewart v. Rhodes*, 473 F. Supp. 1185, 1790-93 (S.D. Ohio 1979), *appeal dismissed* 661 F.

2d 934 (6th Cir. 1981); *Owens-el v. Robinson*, 442 F. Supp. 1368 (*modified* 457 F. Supp. 984 (W.D. Pa. 1978)).

In dealing with detailed instances of brutality, we cannot say the district court exceeded its broad remedial authority in issuing a detailed injunction, especially where Indiana's efforts to explore alternatives seem lacking. *See Landman v. Royster, supra*, 333 F. Supp. at 648. *Cf. Wells v. Franzen*, slip op. No. 84-1669 (7th Cir. Nov. 26, 1985) (violation of due process to restrain prisoner without the approval of a health professional and the taking of adequate health precautions). With respect to some of its specifics, however, we encourage the court at a proper time and in response to specific requests to allow for more flexibility. For example, if a psychiatrist is not immediately available, such as during the middle of the night, perhaps another qualified physician might approve the initial restraint. On the whole, however, Judge Dillin's order prescribes the necessary initial steps for curbing an obnoxious practice. As experience is gained under a properly regulated regime, the district court may permit modifications which seem fully justified by the circumstances.

For example, the United States has urged that bed restraints be allowed elsewhere than in the infirmary. We think that the urgent need for proper control fully justifies the district court in restricting them to the infirmary at this time. But this restriction might prove unnecessary under some future conditions.

C. Medical Care

As the population at Pendleton skyrocketed, the quality of medical care declined. The district court found the institution severely understaffed. Between 1978 and 1982, the population increased by 62 per cent but the number of physicians affiliated with the facility dropped, as did the number of mental health personnel. While there are over 190 requests for medical care per day, there is only one full-time physician, who speaks little English. Inmates in need of medical help get between one and ten minutes

each for evaluation and treatment. As would be expected, there are numerous instances of neglect, misdiagnosis and maltreatment. One patient had tuberculosis that went undiagnosed, another had a broken back that went untreated, a third had an abscessed rectum that went unattended for six months.

"When a state imposes imprisonment as a punishment for a crime, it accepts the obligation to provide persons in its custody with a medical care system that meets minimal standards of adequacy." *Wellman v. Faulkner*, 715 F. 2d 269, 271 (7th Cir. 1983), *cert. denied*, ____ U.S. ____, 104 S.Ct. 3587 (1984). The Supreme Court had ruled that the eighth amendment is violated by "deliberate indifference to serious medical needs of prisoners." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Such indifference may be evinced by "repeated examples of negligent acts which disclose a pattern of conduct by the prison medical staff" or by showing "systematic or gross deficiencies in staffing, facilities, equipment or procedures." *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir. 1980) (citation omitted), *cert. denied*, 450 U.S. 1041 (1981); *Wellman, supra*, 715 F.2d. at 272. Under either criterion, Pendleton's medical services fall short of accepted standards.

After finding an eighth amendment violation, Judge Dillin ordered a comprehensive overhaul of Pendleton's medical staff. He ordered the appointment of an additional full-time physician, required that there be 5 physician's assistants, a hospital administrator, and a full-time pharmacist. To improve mental health services, Judge Dillin mandated that there be one psychiatrist, two psychiatric social workers, a clinical psychologist and two behavioral clinicians. He also required the appointment of 9 medical technicians and two typists and specified that all medical personnel must be able to speak English.

The United States as amicus objects that detailed medical reforms and other modifications ordered at the facility may not be necessary if population is reduced and argues that the state should have been allowed to submit a plan

for reform. While we hesitate to tell the state of Indiana in painstaking detail how to staff the health departments of its prisons, Judge Dillin was within his power in drafting a detailed remedy to curb egregious neglect and mismanagement. Here, too, however, every element of the injunction need not be writ in stone. As the population declines and food, ventilation, sanitation and safety improve, the medical needs of the prisoners may change. To account for such changes, prison officials should be encouraged to report periodically to the district court to determine if modifications of the order are necessary. These reports should provide, *inter alia*, suitable indicia of the demand for services, the rate of utilization of services and the quality of services. Based on such reports, the district court may lower the manning requirements or even abrogate those requirements entirely if those steps would be consistent with a continuing guarantee of constitutional rights.

D. Kitchen Facilities

As the Tenth Circuit noted in *Ramos v. Lamm*, *supra*, 639 F.2d at 570-71, "the state must provide an inmate with a 'healthy, habitable environment.' This includes providing nutritionally adequate food that is prepared and served under conditions which do not present an immediate danger to the health and well being of the inmates who consume it." The district court found the state in violation of these standards. The kitchen, commissary and food storage areas were unsanitary and infested with mice and roaches. The floor was found uncleanable due to holes, cracks, crevices, missing tile and gross porosity. Some of the ceiling was missing. Pots and pans were covered with uncleanable grime. Little attention was paid to special diets.

While conditions at the time of filing suit were grossly inadequate, the district court noted that the state allocated $2 million to rehabilitate the kitchen facility. The court therefore issued a general directive requiring that

the kitchen be maintained to provide inmates with safe, sanitary and nutritious food. We approve fully of the district court's action.

E. Exercise and Recreation

The district court ordered that prisoners be permitted to engage in at least 90 minutes per day of "meaningful recreation." In so ruling, we believe the court overstepped its bounds. The general population gets 90 minutes of outdoor exercise during good weather. The Pendleton facility has 2 baseball diamonds, handball, volleyball and basketball courts, a football field, a jogging area and a horseshoe pit. In inclement weather, the prisoners exercise indoors in the fieldhouse, which is equipped with sporting goods and a small gym and has a television set. Judge Dillin objected to the time spent in the indoor gym because it was cramped and noisy. He also objected to the treatment of those in Administrative Segregation. These individuals get 2½ hours of exercise twice a week and spend approximately one hour each week in commissary. The judge found that these prisoners receive insufficient daily exercise.

Lack of exercise may certainly rise to a constitutional violation. Where movement is denied and muscles are allowed to atrophy, the health of the individual is threatened and the state's constitutional obligation is compromised. In *Preston v. Thompson*, 589 F.2d 300 (7th Cir. 1978), for example, this court found a violation where prisoners were never allowed out of their cells to exercise. Similarly, in *Spain v. Procunier*, 600 F.2d 189, 199 (9th Cir. 1979), the court found it an eighth amendment violation to completely deny some prisoners exercise and to limit the remaining population to less than five hours indoor exercise per week.

However, we cannot say that the prisoners here are denied "the minimal civilized measure of life's necessities" merely because during some periods they cannot hear the television. Nor can we call it a "wanton and unnecessary

infliction of pain" to have to exercise in cramped quarters. Even those within the Administrative Segregation Unit are allowed exercise periods within the constitutional minimum. *See Bono v. Saxbe*, 620 F.2d 609, 613 (7th Cir. 1980).

F. Protective Custody

Plaintiffs complained that those prisoners who were confined in protective custody did not have equal access to the same vocational, academic and rehabilitation programs as those in the general prison population. In its second opinion, the district court agreed with defendants that the failure to provide such programs did not constitute cruel and unusual punishment, *see French v. Owens*, Mem. No. IP-75-677-C (S.D. Ind. Dec. 14, 1984); *see also Rhodes v. Chapman*, 452 U.S. 337, 348 (1982) (deprivations of jobs and educational programs "simply are not punishment"), *Madyun v. Thompson*, 657 F.2d 868, 874 (7th Cir. 1981); *French v. Heyne*, 547 F.2d 994, 1002 (7th Cir. 1976), but nonetheless ordered that the same programs must be provided to protective custody inmates as to others. It stated that "providing access to rehabilitative programs to general population inmates while denying access to such programs to inmates segregated for nondisciplinary reasons may constitute a violation of the Equal Protection Clause of the Fourteenth Amendment." *French v. Owens*, Mem. op. at 14. The court concluded that treating protective custody inmates differently did not serve any rational interest when the state created conditions necessitating the widespread use of protective custody.

We cannot accept the district court's rationale. This circuit has previously held that security reasons justify limiting the access of prisoners in protective custody to rehabilitative programs. *See Bono v. Saxbe, supra*, 620 F.2d at 615; *Cf. Lock v. Jenkins*, 641 F.2d 488, 494 (7th Cir. 1981) ("Prisoners selecting placement in the [protective custody] unit, generally to avoid perceived dangers to themselves, also logically must be subject to signifi-

cant restrictions."). Neither *Bono* nor *Lock* suggests that limitations on protective custody inmates do not apply when the state creates conditions that increase reliance on protective custody. In urging such an exception to this court's prior rulings, Judge Dillin has, we believe, undermined the state's ability to operate an effective protective custody program. Some argument can always be made that prison conditions have contributed to the violent tendencies that require one prisoner to be locked up to protect him from others and another to be locked up to protect others from him. As the court concluded in *Allgood v. Morris*, 724 F.2d 1098, 1100-01 (4th Cir. 1984):

> The rationality of a distinction between privileges for prisoners in the general population and those in protective custody goes to the fundamental purpose of such segregation. Protective segregation is offered to inmates for their safety, the safety of others in confinement, and to insure institutional security and order. To allow prisoners in protective custody to enjoy all of the same privileges to the same degree as those in the general population would eviscerate the nature of protective segregation. Because the differences in treatment among prisoners in protective segregation and the general population has a substantial, rational basis in the legitimate state interest of prison security, we hold that Allgood's rights to equal protection have not been abridged.

Accordingly, we disapprove the court's order regarding protective custody. Of course, this should not discourage the state from providing such rehabilitative programs as are feasible within the limitations of the protective custody program.

G. Correction Officers

While some instances of violence unfortunately may be expected in America's prisons, the record in this case details countless examples of abhorrent beatings and wicked

acts. As the district court found, "security of inmates from physical attacks by other inmates is a problem at the Reformatory. Severe forms of violence, including stabbings, bludgeonings, and homosexual rapes, occur with distressing frequency. A number of these instances have resulted in fatalities. Lesser forms of violence, such as harassment, threats, intimidation, striking and beating may be said to be routine." One prisoner was doused with lighter fluid by an inmate attempting to set him aflame. Another was bludgeoned with a 10 pound can opener. A 15 year old youth was raped at knifepoint by a group of inmates.

The constitution cannot countenance such widespread abuses. "The right to personal security constitutes an 'historic liberty interest' protected by the due process clause. *Ingraham v. Wright*, 430 U.S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes." *Youngberg v. Romeo*, 457 U.S. 307, 315 (1982). As this circuit has noted, the eighth amendment is violated when attacks occur so frequently as to be "pervasive," *Walsh v. Brewer*, 733 F.2d 473, 475 (7th Cir. 1984). The district court so found and its order requiring the state to submit a plan to employ and train sufficient security personnel to ensure the inmates safety is without question reasonable and legitimate.

H. Fire and Safety Violations

Plaintiffs, finally, complain that the Pendleton Reformatory does not meet the constitution's required standards for fire safety or for safety in work areas. The plaintiffs alleged that electrical wiring was not properly maintained, that there were inadequate fire exits, and that the facility had no established procedures to respond to fires. (Plaintiffs' Supplemental Brief at 33-37). They noted that paper articles were stored in boiler rooms and that solvents were stored near flames. The district court found numerous violations of the Indiana State Fire Regulations. It found these violations constitutionally unacceptable and ordered that "to secure compliance with the personal safety

requirements of the eighth and fourteenth amendments, the defendants shall bring all buildings into compliance with the standards of the Indiana State Fire Marshal." *French v. Owens*, Amended Order No. IP 75-677-C, at 5 (S.D. Ind. Dec. 14, 1984).

Plaintiffs also charged that the work areas had improper ventilation, that prisoners were exposed to lethal fumes and fluids, that power tools lacked safety guards and that there was inadequate eye protection. The district court, using Federal OSHA standards as a guide, agreed that these conditions were constitutionally defective. It therefore ordered full compliance with OSHA regulations.

There is no question that fire and occupational safety are legitimate concerns under the eighth amendment. *Santana v. Collazo*, 714 F.2d 1172, 1183 (1st Cir. 1983), *cert. denied*, ____ U.S. ____, 107 S.Ct. 2352 (1984); *Leeds v. Watson*, 630 F.2d 674, 675 (9th Cir. 1980). However, "not every deviation from ideally safe conditions constitutes a violation of the constitution." *Ruiz v. Estelle*, 679 F.2d 1115, 1152-53. *See Santana, supra*, 714 F.2d at 1183. The eighth amendment does not constitutionalize the Indiana Fire Code. Nor does it require complete compliance with the numerous OSHA regulations. "The district judge may consider these standards, but must order the correction of specific violations and may require only that these corrections bring the conditions above constitutional minima." *Hoptowit v. Ray*, 682 F.2d 1237 (9th Cir. 1982). While fire and occupational safety no doubt need improvement at Pendleton, the district court erred in requiring compliance with specific administrative requirements to remedy those defects. On remand, the district court should reconsider these matters and require specific corrections of conditions to meet constitutional standards.

III.

The judgment of the district court insofar as it pertains to overcrowding and double celling, mechanical restraints, medical care, kitchen services and correction officers is

therefore affirmed. The judgment to the extent it pertains to exercise and recreation, protective custody and fire and occupational safety is vacated and remanded to the district court for further proceedings not inconsistent with this opinion.

AFFIRMED IN PART; VACATED AND REMANDED IN PART.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

November 26, 1985.

Before

HON. RICHARD D. CUDAHY, *Circuit Judge*
HON. JESSE E. ESCHBACH, *Circuit Judge*
HON L. CLURE MORTON, *Senior District Judge**

No. 83-2280	) Appeals from the
RICHARD A. FRENCH, et al.,	) United States
Plaintiffs-Appellees,	) District Court for
vs.	) the Southern
NORMAN G. OWENS, et al.,	) District of Indiana
Defendants-Appellants.	) Indianapolis Division
	)
No. 85-1065	) No. 75 C 677
RICHARD A. FRENCH, et al.,	)
Plaintiffs-Appellees,	) Judge S. Hugh Dillin
vs.	)
NORMAN G. OWENS, et al.,	)
Defendants-Appellants.	)
UNITED STATES OF AMERICA,	)
Amicus Curiae.	)

This cause was heard on the record from the United States District Court for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED IN PART, VACATED AND REMANDED IN PART, in accordance with the opinion of this Court filed this date.

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* The Honorable L. Clure Morton, Senior District Judge of the Middle District of Tennessee, sitting by designation.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

February 12, 1986.

Before

HON. WALTER J. CUMMINGS, *Chief Judge*
HON. WILLIAM J. BAUER, *Circuit Judge*
HON. HARLINGTON WOOD, JR., *Circuit Judge*
HON. RICHARD D. CUDAHY, *Circuit Judge*
HON. RICHARD A. POSNER, *Circuit Judge*
HON. JOHN L. COFFEY, *Circuit Judge*
HON. JOEL M. FLAUM, *Circuit Judge*
HON. FRANK H. EASTERBROOK, *Circuit Judge*
HON. KENNETH F. RIPPLE, *Circuit Judge*

RICHARD A. FRENCH, *et al.*, Plaintiffs-Appellees,	) Appeal from the) United States) District Court for
Nos. 83-2280 vs. 85-1065	) the Southern) District of Indiana,) Indianapolis
NORMAN G. OWENS, *et al.*, Defendants-Appellants.	) Division.)) No. 75 C 677) S. Hugh Dillin,) *Judge.*

ORDER

On consideration of the petition for rehearing and suggestion for rehearing *en banc* filed in the above-entitled cause by counsel for plaintiffs-appellees, all members of the original panel* voted to deny same. A vote of the active members of the court was requested, and a majority** of

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* The Honorable L. Clure Morton, Senior District Judge of the Middle District of Tennessee, sitting by designation on the original panel did not participate in the suggestion for rehearing *en banc.*

** The Honorable Richard A. Posner voted to grant the rehearing *en banc.*

the judges in regular active service voted to deny a rehearing *en banc*. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing and suggestion for rehearing *en banc* be, and the same is hereby, DENIED.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

January 16, 1985.

Before

By the Court:

RICHARD A. FRENCH, et al., Plaintiffs-Appellees,	) Appeals from the) United States) District Court for
No. 83-2280 vs.	) the Southern) District of Indiana,
NORMAN G. OWENS, et al., Defendants-Appellants.	) Indianapolis) Division.
.....	)
RICHARD A. FRENCH, et al., Plaintiffs-Appellees,	) No. 75-C-677,) Hon. S. Hugh Dillin,) *Judge.*
No. 85-1065 vs.	)
NORMAN G. OWENS, et al., Defendants-Appellants,	)
UNITED STATES OF AMERICA, Amicus Curiae.	)

ORDER

The Court, on its own motion, orders that these appeals are CONSOLIDATED.

IT IS FURTHER ORDERED that supplemental briefing shall proceed as follows:

1. Defendants-appellants shall file their supplemental brief and required short appendix on or before February 15, 1985.

2. Plaintiffs-appellees shall file their supplemental brief on or before March 8, 1985.

3. Defendants-appellants shall file their reply brief, if any, on or before March 22, 1985.

This matter shall be set for oral argument during the week of April 1, 1985 or as soon thereafter as practicable. Accordingly, requests for extensions of time will be regarded with extreme disfavor.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RICHARD A. FRENCH	)	
MORRIS E. DOZIER,	)	
MARTIN W. BRADBERRY,	)	
HENRY C. JENNINGS,	)	
On behalf of themselves and	)	
all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	NO. IP 75-677-C
	)	
NORMAN OWENS, Individually and	)	
in his official capacity	)	
as Superintendent of the	)	
Indiana Reformatory;	)	
CLOID SCHULER, In his capacity	)	
as Executive Director of	)	
the Adult Authority, Indiana	)	
Department of Correction;	)	
GORDON FAULKNER, In his	)	
capacity as Commissioner	)	
of the Indiana Department	)	
of Correction,	)	
	)	
Defendants.	)	

MEMORANDUM

This case is before the Court on remand from the United States Court of Appeals for the Seventh Circuit, by agreement of the parties and pursuant to this Court's Memorandum Entry of August 30, 1984. This Court previously entered its Order and Memorandum of Decision awarding permanent injunctive relief in favor of the plain-

tiffs on May 7, 1982, finding that certain conditions of confinement at the Indiana Reformatory violated state and federal law. *French v. Owens*, 538 F.Supp. 910 (S.D.Ind. 1982). During the pendency of this case on appeal to the Seventh Circuit Court of Appeals, the United States Supreme Court ruled in *Pennhurst State School and Hospital v. Halderman*, ___ U.S. ___, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984), that under the Eleventh Amendment to the United States Constitution, federal courts lacked jurisdiction over claims for injunctive relief against state officials based upon state law.

Because the May 7, 1982 order was based, in part, upon findings of state law violations and compelled state officials to comply with state law, that order must be reconsidered in light of *Pennhurst, supra.*

The original decision in this case was rendered under the familiar principle of first considering pendent state law claims in order to avoid unnecessarily determining federal constitutional law questions. Numerous violations of state law were found and in areas where no specific state statute applied, certain violations of the Eighth and Fourteenth Amendments to the United States Constitution were found.

The Court specifically found that the deplorable housing and extensive overcrowding, including double-celling and double-bunking, constituted cruel and unusual punishment when considered in light of the other grievous conditions imposed upon the inmates. The Court also found that the totality of the conditions existing at the Reformatory violated the Eighth and Fourteenth Amendments. These holdings are not altered by this memorandum, *see Wellman v. Faulkner*, 715 F.2d 269, 274 (7th Cir. 1983), *cert. denied*, ___ U.S. ___, 104 S.Ct. 3587, 82 L.Ed.2d 885 (1984); *Palmigiano v. Garrahy*, 443 F.Supp. 956, 979 (D.R.I. 1977), nor are the previous findings with respect to prison discipline and access to courts altered herein.

The Court found that state statutes regulating prison conditions were violated at the Reformatory as follows: Ind.

Code § 11-10-11-2 respecting exercise and recreation; Ind. Code §§ 11-10-3-2 and 11-10-4-2 respecting medical care for both physical and mental health problems; Ind. Code §§ 11-10-5-1, 11-10-6-2, and 11-10-6-3 respecting academic and vocational education and employment; and Ind. Code §§ 11-11-6-1 and 11-11-6-2 respecting a safe and healthful environment. Upon finding these state law violations, the Court did not determine whether the same conditions constituted violations of federal law. In light on *Pennhurst*, however, this Court lacked jurisdiction to consider the pendent state law claims. Therefore, the Court must now reconsider the findings in this case under federal law standards.

The Eighth Amendment to the United States Constitution proscribes the imposition of cruel and unusual punishment and is applicable to the states through the Fourteenth Amendment. *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962). The proscription against cruel and unusual punishment must be viewed under "evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337, 346, 101 S.Ct. 2392, 69 L.Ed.2d 59, 68 (1981). Conditions of confinement will abridge the Eighth Amendment if they "involve the unnecessary and wanton infliction of pain . . . or are grossly disproportionate to the severity of the crime" (citations omitted). Id. Additionally, prison conditions resulting in serious deprivations of basic human needs have been found to constitute cruel and unusual punishment under the Eighth Amendment. *Hutton v. Finney*, 437 U.S. 678, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978); *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).

In considering challenged prison conditions under the Eighth Amendment, the Court must consider the "totality of the conditions of confinement" but nevertheless, must not make vague conclusions of unconstitutionality. *Smith v. Fairman*, 690 F.2d 122 (7th Cir. 1982). Conditions which independently are unquestionably constitutional do not be-

come unconstitutional by their aggregation. *Wellman v. Faulkner*, 715 F.2d 269, 275 (7th Cir. 1983). Conditions may be restrictive and even harsh, but unless they constitute cruel and unusual punishment, "they are part of the penalty that criminal offenders pay for their offenses against society." On the other hand, conditions other than those in *Gamble* and *Hutto, alone or in combination* (our italics), may deprive inmates of the minimal civilized measure of life's necessities and be cruel and unusual. *Rhodes v. Chapman*, 452 U.S. 337, at 347.

1. Exercise and Recreation

The importance of regular exercise and recreation to the physical and psychological health of incarcerated individuals is well recognized. *Patterson v. Mintzes*, 717 F.2d 284 (6th Cir. 1983); *Ruiz v. Estelle*, 679 F.2d 1115, 1152, *modified*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, ___ U.S. ___, 103 S.Ct. 1438, 75 L.Ed.2d 795 (1983). *See Preston v. Thompson*, 589 F.2d 300 (7th Cir. 1978); *Hendrix v. Faulkner*, 525 F.Supp. 435, 523 (N.D.Ind. 1981), *aff'd in part, rev'd in part sub nom, Wellman v. Faulkner*, 715 F.2d 269 (7th Cir. 1983), *cert. denied*, ___ U.S. ___, 104 S.Ct. 3587, 82 L.Ed.2d 885 (1984). A deprivation of exercise or recreation, impairing the physical or mental health of inmates, violates the Eighth Amendment. *Ruiz v. Estelle*, 679 F.2d at 1152. Factors to consider in analyzing the adequacy of exercise and recreation for prisoners include the size of the cell, the amount of time the inmate spends locked in the cell each day, and the overall duration of confinement. *Id.* at 1151. The inmates at the Reformatory were found to be double-celled and double-bunked in less than half the space required under contemporary minimum standards.

The inmates are confined for up to 23 hours a day and frequently, when exercise and recreation are provided, the inmates are crowded in the tiny gymnasium where no meaningful exercise or recreation is possible for the vast

majority of the inmates. Additionally, few inmates were found to have education assignments and only 64% had job assignments. The number of working inmates, nevertheless, exceeds the authorized number of positions available.

Lastly, the Indiana Reformatory is a maximum security institution in which most inmates are serving long, and frequently life, sentences. The conditions at the Reformatory have resulted in increased tension and violence and have caused a significant increase in the number of inmates seeking protective custody. Inmates in protective custody, as well as those in administrative segregation pending investigations of prison rules and pretrial detainees, are afforded significantly less exercise and recreation than inmates in the general population and are denied access to educational, vocational and work assignments. The increased severity of confinement for these inmates serves no penological purpose and is imposed upon them merely because the institution is overcrowded and lacks suffcient staff to secure their safety. Therefore, considering the size of the cells and dormitories, the time spent confined in them, the duration of confinement at the Reformatory and other noted conditions, the deprivation of adequate exercise and recreation has a degenerative effect on the mental and physical health of the inmates and constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

2. **Medical and Psychiatric Care**

The defendants have an obligation to provide adequate medical care for individuals incarcerated at the Reformatory. Intentional denial of access to medical care or interference with prescribed treatment by prison officials violates the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). The Supreme Court has explained that "the denial of medical care is cruel and unusual because, in the worst case, it can result in physical torture, and, even in less serious cases, it

can result in pain without any penological purpose." *Rhodes v. Chapman*, 452 U.S. 337, 347, 101 S.Ct. 2392, 69 L.Ed.2d 59, 69 (1981).

The obligation to provide medical care to incarcerated individuals extends to medical treatment for physical illness, to dental care, and to psychiatric and psychological care. *Ramos v. Lamm*, 639 F.2d 559, 574 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041, 101 S.Ct. 1759, 68 L.Ed.2d 239 (1981). *See also Monmouth County Correctional Institution Inmates v. Lanzaro*, No. 82-1924 (D.N.J. Oct. 10, 1984); *Fields v. Gander*, 734 F.2d 1313 (8th Cir. 1984); *Wellman v. Faulkner*, 715 F.2d 269 (7th Cir. 1983), *cert. denied*, ___ U.S. ___, 104 S.Ct. 3587, 82 L.Ed.2d 885 (1984).

In considering whether the denial of medical care reaches constitutional significance, courts must determine whether the system of providing medical care evidences a deliberate indifference to the serious medical needs of the inmates. *Estelle v. Gamble, supra; Wellman v. Faulkner, supra.*

"Deliberate indifference" may be demonstrated by repeated examples of improper or inadequate medical treatment, interference with prescribed treatment, failure to treat legitimate medical complaints, or by systemic deficiencies in staff, facilities, equipment or procedures. *Wellman v. Faulkner, supra; Ramos v. Lamm*, 639 F.2d 559 (10th Cir. 1980).

The delivery of medical and psychiatric services, the physical facilities and the procedures for diagnosing and treating the serious health needs of the inmates at the Reformatory were previously found to be grossly sub-standard. The Court noted that serious staff deficiencies existed. The only staff physician also acts as medical director and has a private medical practice. Although he is "on call" 24 hours as day, the record shows examples of his unavailability and refusal to come to the Reformatory when called. Furthermore, he is a native Korean and is

unable to communicate effectively in English. The remaining medical staff was found to be performing tasks for which they were not qualified and they were overworked and inadequately supervised. An additional physician position has been authorized for years but unfilled due to the unrealistic salary offered.

The procedures for the delivery of medical care to the inmates was found to be "so insufficient as to guarantee inadequate services." Memorandum of Decision of May 7, 1982 at 14. Medical technicians (a classification not recognized under Indiana law) see between 150 and 190 patients in a few hours, the physician assistants may see 20 to 30 patients in a two hour period, and the physician, out of the 190 patient requests per day, will see approximately 10 patients. Inmates on lockup are denied adequate medical services to an even greater degree. Instances of neglect of serious illnesses for unreasonable lengths of time, improper diagnosis and treatment by unqualified staff, failure to follow prescribed treatment, failure to provide special diets, and discontinuation of prescribed medication are documented in the record. The lack of effective procedures for the delivery of a minimum level of medical care is obvious and intolerable.

The physical facilities and equipment are inadequate, antiquated, obsolete and poorly staffed. The second floor infirmary, available for inmates with minor ailments requiring confinement to bed, has no mechanical ventilation and no medical personnel stationed on the ward. Inmates requiring any more acute care cannot be treated at or near the Reformatory but rather must be transported to Wishard Memorial Hospital in Indianapolis, 40 minutes from the Reformatory. Wishard Hospital provides both in-patient and out-patient services for inmates. Closer hospitalization facilities in Anderson, Indiana are almost never used.

As a result of the insufficient and unqualified medical staff, the inadequate procedures for the delivery of medical

services to the inmates, and the inadequate physical facilities, instances of inadequate and improper medical care, interference with prescribed medication and treatment, and a denial of access to medical care for legitimate medical complaints are commonplace. The record clearly shows that the extensive deficiencies in the medical care provided to the inmates constitute a deliberate indifference to the serious medical needs of the inmates, imposing upon them cruel and unusual punishment.

Similarly grievous deficiencies exist with respect to the availability of psychiatric care. The staff is grossly insufficient, especially in light of the high level of mental illness that occurs statistically in maximum security institutions such as the Reformatory. The mental health care staff contains only one psychiatrist available for diagnostic purposes for three hours per week. The other full-time and part-time staff members, including two psychologists and a behavioral clinician, are unable to prescribe medications and have an anti-drug bias. The intolerable barbaric practice of depriving psychotic inmates of needed medication to control their illnesses and, instead restraining them in beds, spread-eagle fashion, in the event of a seizure or episode of delusion has been prohibited by this court through the preliminary restraining order made permanent by the Order of May 7, 1984.

The insufficient staff coupled with grossly inadequate procedures for the delivery of psychiatric services result in improper or inadequate treatment or in a complete deprivation of treatment for the inmates' serious mental health problems. There is a long waiting list of inmates seeking psychiatric help, no method of rapidly transporting inmates to the only available acute psychiatric hospitilization facilities at the Westville Psychiatric Unit in Westville, Indiana, no follow-up care procedures upon return to the Reformatory, and frequent discontinuation of prescribed medications. Additionally, 70% of the inmates at the Reformatory have histories of substance abuse, yet

only five receive professional counseling and treatment. As in the case of medical care, an additional staff position has been authorized but unfilled due to an uncompetitive salary level.

The systemic deficiencies in the staffing and procedures for the delivery of psychiatric care to the inmate population demonstrate a deliberate indifference to the serious health needs of the inmates and result in cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

3. Safe and Healthful Environment

Inmates are subjected to double-celling and double-bunking with little if any area to sit erect or stand. The cells and dormitories have exceedingly poor lighting, inadequate ventilation, indequate temperature control, are dirty and odorous and have virtually uncleanable toilets and lavatories. The inmates are denied adequate medical and psychiatric care and are unreasonably deprived of exercise, recreation, education or job opportunities. These aggravated, overcrowded housing conditions were found to violate the Eighth Amendment. Additional aggravating conditions, including hazardous work areas, inadequate precautions against fire, inadequate and unhealthy food services, other hazardous and unhealthy environmental conditions, and lack of protection of inmates, were found to violate state law. These latter conditions also violate federal law.

A. Work Areas

The work areas at the Reformatory were found to be in violation of minimum safety standards required under Occupational Safety and Health Administration (OSHA) regulations. The work areas particularly lacked adequate ventilation, respirators and gloves and the noise levels in some areas far exceeded the maximum allowable. Violations of these minimum standards unreasonably

threaten the health and safety of the inmates and inflict upon them unnecessary and wanton pain.

B. **Fire Protection**

Most, if not all the buildings at the Reformatory pose an imminent threat to the safety of the inmates in case of fire. Improper storage of flammable substances, lack of exit signs, smoke detectors or alarm systems, lack of alternate methods of egress, and inadequate evacuation procedures are documented in the record. Failure to provide reasonable protection against the threat of fire constitutes cruel and unusual punishment. *See Santana v. Collazo*, 714 F.2d 1172 (1st Cir. 1983), *cert. denied*, ___ U.S. ___, 104 S.Ct. 2352 (1984). The defendants have systematically failed to provide adequate fire protection, demonstrating a wanton indifference to the health and safety of the Reformatory inmates.

C. **Food Services**

The kitchen, commissary and food storage areas at the Reformatory are unsanitary and infested with mice and roaches. The kitchen floor was found to be uncleanable due to holes, cracks, crevices, missing tile and gross porosity. Pots and pans were in such poor repair as to be uncleanable and the food warming tables in the dining area were inoperable. Procedures for providing special diets to inmates requiring such were lacking. The deplorable condition of the facilities and deficiencies in the delivery of food services pose an imminent threat to the health and safety of the inmates in violation of the Eighth and Fourteenth Amendments. *Ramos v. Lamm*, 639 F.2d 559 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981).

D. **Environmental Health Problems**

In addition to the infestation of the kitchen and food storage areas, the dormitories and one cellblock are infested with birds, flies, and other insects in warm

months. Plumbing chases were found to be dirty and ideal for harboring insects and rodents. Lack of hot water in the cells, inadequate ventilation, and unsanitary toilets, showers, and lavatories encourage the spread of communicable diseases and pose additional serious public health threats. Inadequate lighting, especially on the administrative segregation unit, causes eyestrain, hinders sanitation efforts and smacks of unjustified punitive action. These conditions, exascerbated by overcrowding and inadequate opportunities for activity outside the cell or dormitory, fail to meet contemporary standards of decency and impose unnecessary and wanton pain upon the inmates.

E. Inmate Protection

The defendants have an obligation to protect inmates from unreasonable risks of violence or bodily harm from other inmates. *Walsh v. Brewer*, 733 F.2d 473, 476 (7th Cir. 1984). "'[D]eliberate indifference' to violent inmate attacks deprive inmates of their eighth amendment rights." *Id.* at 476. At the Reformatory, severe forms of violence resulting in a number of fatalities, were noted to occur with distressing frequency.

The security staff at the Reformatory is inadequate to handle the number of confined inmates. The overcrowding and other grievous conditions result in increased tension to the "blowing level," increased incidences of violence, sexual assaults, and aggressive behavior. With an insufficient security staff and inadequate communication system among the prison guards, a lack of control over behavior among inmates is inevitable. The lack of security in the general population has required widespread use of protective custody, despite the additional restrictions and intolerable conditions imposed there. Still, violence persists.

The record clearly demonstrates that the inadequate personal security afforded the inmates constitutes cruel and unusual punishment.

4. Academic and Vocational Education

The inadequacy of academic and vocational education and work programs was previously found to violate state law. The deprivation of rehabilitative programs, however, generally does not constitute cruel and unusual punishment. *Bono v. Saxbe*, 620 F.2d 609 (7th Cir. 1980); *French v. Heyne*, 547 F.2d 974 (7th Cir. 1976). Nevertheless, providing access to rehabilitative programs to general population inmates while denying access to such programs to inmates segregated for nondisciplinary reasons may constitute a violation of the Equal Protection Clause of the Fourteenth Amendment. *Durso v. Rowe*, 579 F.2d 1365 (7th Cir. 1978), *cert. denied*, 439 U.S. 1121, 99 S.Ct. 1033, 59 L.Ed.2d 82 (1979); *French v. Heyne, supra.* If the denial of access to rehabilitative programs for inmates in protective custody does not rationally further some legitimate state interest, the disparate treatment of those inmates may be proscribed. *Durso v. Rowe, supra; French v. Heyne, supra.*

Generally, a rational relationship exists between the legitimate state interest in maintaining prison security and providing protective custody to inmates with limitations on privileges. *Allgood v. Morris*, 724 F.2d 1098 (4th Cir. 1984); *Lovell v. Brennan*, 566 F.Supp. 672 (D.Me. 1983), *affirmed*, 728 F.2d 560 (1st Cir. 1984); *Durrough v. Hogan*, 563 F.2d 1259 (5th Cir. 1977). When the state creates the conditions necessitating the widespread use of protective custody, however, the denial of access to rehabilitative programs is not justified by the state's interest in prison security. *Palmigiano v. Garrahy*, 443 F.Supp. 956 (D.R.I. 1977). *See also Reddin v. Israel*, 455 F.Supp. 1215 (E.D.Wis. 1978). The security interest is not rationally furthered by overcrowding protective custody facilities while overcrowded, understaffed, and other deplorable conditions of confinement persist in the general population.

Such aggravating conditions exist at the Reformatory, resulting in the utter failure to control violence among the inmate population and necessitating extensive use of

protective custody. Denying access to rehabilitative programs to the large number of inmates in protective custody is irrational and violates the inmates' rights under the Equal Protection Clause of the Fourteenth Amendment.

In summary, the conditions existing at the Reformatory at the time of and prior to the May 7, 1982 Order and Memorandum in many respects imposed cruel and unusual punishment upon the inmates or denied certain inmates of their rights to equal protection. The Court recognizes that, since the 1982 order, substantial progress has been made toward correcting the unconstitutional conditions and that the improvements must be considered in fashioning an appropriate remedy. *Ramos v. Lamm*, 639 F.2d at 586. The improvements at the Reformatory noted in detail in the Court's memorandum Order of July 7, 1983, included new housing and health care facility construction, renovation of existing facilities, increased staffing and improved procedures for delivering necessary services and providing exercise, recreation, education and work. The Court, therefore, will modify the order of injunctive relief previously entered in this cause consistent with the constitutional violations found herein and in light of the progress made toward remedying the unconstitutional conditions of confinement.

Dated this 14th day of December, 1984.

/s/ S. Hugh Dillin

S. Hugh Dillin, Judge

Copies to:

Donald R. Lundberg, William E. Marsh, Legal Services Organization of Indiana, Inc., Suite 300, 107 North Pennsylvania Street, Indianapolis, Indiana, 46204

Linley E. Pearson, Indiana Attorney General, 219 State House, Indianapolis, Indiana, 46204 (David A. Arthur, Deputy)

John Daniel Tinder, United States Attorney, 274 United States Courthouse, Indianapolis, Indiana, 46204 (Harold R. Bickham, Assistant)

James Clute, Civil Rights Division, Department of Justice, P.O. Box 23991, Washington, D.C., 20026-3991

Edith S. Marshall, Department of Justice, HOLC Building, 320 First Street, N.W., Washington, D.C. 20530

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RICHARD A. FRENCH MORRIS E. DOZIER, MARTIN W. BRADBERRY, HENRY C. JENNINGS, On behalf of themselves and all others similarly situated, Plaintiffs, -vs- NORMAN OWENS, Individually and in his official capacity as Superintendent of the Indiana Reformatory; CLOID SCHULER, In his capacity as Executive Director of the Adult Authority, Indiana Department of Correction; GORDON FAULKNER, In his capacity as Commissioner of the Indiana Department of Correction, Defendants.	)	NO. IP 75-677-C

AMENDED ORDER

The Court having this day filed its amended memorandum of decision in the above entitled cause, as follows: (H.I.), now pursuant thereto

IT IS ORDERED ADJUDGED AND DECREED that the defendants, their agents, successors in office, and all persons acting in concert or participation with them, shall comply with the following requirements:

1. Paragraphs 3, 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, 16, 17, 20 and 21 of this Court's order of May 7, 1982 are hereby vacated. Consistent with the July 7, 1983 amendments made to the May 7, 1982 order, paragraph 11 of the order is amended to provide that: "The right of an inmate to call a particular witness at a disciplinary hearing may be denied by the defendants only when the record reflects a justifiable reason for refusing to call the desired witness."

2. Effective January 1, 1985, and thereafter the population at the Indiana Reformatory shall not at any time exceed 1,615 persons. This figure will be modified to take into consideration any additional newly constructed housing, if any.

3. Effective May 1, 1985, and thereafter, no more than one inmate shall be assigned to any cell.

4. Effective May 1, 1985, and thereafter, double bunk beds shall not be used in any dormitory.

5. At the earliest possible time and by no later than January 1, 1985, the medical staff at the Reformatory shall include at least two full-time medical doctors, five full-time physician's assistants, a full-time hospital administrator, a full-time pharmacist, a psychiatrist or psychiatrists for at least 40 hours per week, two Masters level psychiatric social workers, one Ph.D. clinical psychologist, two behavioral clinicians, nine medical technicians, and two full-time clerk typists. All medical personnel shall be fully qualified, and all newly hired personnel must be able to converse fluently in the English language. If qualified personnel cannot be obtained at present salary levels, raise the levels.

6. Defendants shall provide medical care facilities and equipment sufficient to make available adequate medical care to the inmate population. Within 30 days, defendants shall submit specific plans to comply with this paragraph by May 1, 1985. Said plans shall include development of alternative emergency care facilities, provisions for the

prompt referral of inmate patients for diagnosis and treatment without nonmedical limitations on the number of daily referrals, obtaining adequate medical equipment, and either renovating the present facility or constructing a new medical facility at the Reformatory. Notwithstanding the earlier compliance date of January 1, 1985. renovation of the present medical facility shall be complete by January 1, 1986, or alternatively, construction of a new medical facility shall be complete by July 1, 1986.

7. Defendants shall establish adequate and proper procedures for the delivery of medical care to the inmate population. Within 30 days, defendants shall submit specific plans to comply with this paragraph by May 1, 1985. Said plans shall include procedures for sick call open to all inmates at least six days per week, delineation of responsibility and authority between the various medical personnel, provisions for close supervision of all nonphysician personnel, and provisions for daily sick call for all inmates confined to their cells.

8. Defendants shall provide substance abuse programs and mental health services and counseling for those who need and want such treatment. Within 30 days, the defendants will submit a plan for compliance with this paragraph, including crisis intervention, so that compliance will occur on or before May 1, 1985.

9. Defendants shall within 60 days submit to the Court a plan which will provide for preparation and distribution of special medically prescribed diets under the supervision of qualified personnel.

10. The kitchen and dining room at the Indiana Reformatory shall be at all times maintained in such a condition as is necessary to provide the inmates with safe, sanitary and nutritionally adequate food.

11. Each inmate at the Indiana Reformatory who is in general population, protective custody, or otherwise segregated for nondisciplinary reasons, shall have the

opportunity to engage in recreation outside his living unit for at least 90 minutes each day. Inmates confined to the Maximum Restraint Unit or the Administrative Segregation Unit for disciplinary reasons shall have the opportunity to engage in recreation outside the living unit for at least 50 minutes each day. The recreation shall be made available outdoors, unless inclement weather or security reasons necessitate otherwise, in which case the recreation opportunity may be indoors. Whether indoors or outdoors, the opportunity to recreate shall be in a facility where the inmates have an opportunity to engage in meaningful recreation. Inmates confined to Disciplinary Segregation shall be afforded a meaningful opportunity to recreate during the 60 minutes each day out of cell, which opportunity to recreate can be out of doors, on the range if adequate equipment is provided, or at some other place, provided, however, that inmates who abuse the right to engage in recreation may be deprived of such opportunity for a period not to exceed 30 days. Otherwise, permitting the inmates to have access to the range in front of the cells does not constitute compliance with this paragraph.

12. All inmates confined in the protective custody program and all other inmates segregated for nonpunitive reasons, shall be provided access to all programs, activities, recreation and counseling on a basis which is reasonably comparable with that afforded the general population. Within 60 days, the defendants shall submit specific plans to comply with this paragraph.

13. The defendants shall at all times employ an adequate number of correctional officers to secure within reason the personal safety of all inmates confined at the Indiana Reformatory. The correctional officers shall be adequately trained and shall be deployed in such a manner that the personal safety of the inmates is protected. Additional attention shall be given to dormitories and upper tiers of the cellblocks. The defendants shall submit a plan for complying with this paragraph within 60 days of this date.

14. All buildings at the Indiana Reformatory in which inmates live or work shall be reasonably secure from dangers of fire. In order to secure compliance with the personal safety requirements of the Eighth and Fourteenth Amendments, the defendants shall bring all buildings into compliance with the standards of the Indiana State Fire Marshal no later than May 1, 1985, and shall maintain the buildings in accordance with that standard at all times thereafter.

15. All operations in the various places of work and training at the Indiana Reformatory shall be operated in a safe manner as required by the Eighth and Fourteenth Amendments to the Constitution of the United States in accordance with the regulations of the Occupational Safety and Health Administration. The defendants shall submit a plan for compliance with this paragraph within 60 days of this date.

All of which is considered and ordered this 14th day of December, 1984.

/s/ S. Hugh Dillin

S. Hugh Dillin, Judge

Copies to:

Donald R. Lundberg, William E. Marsh, Legal Services Organization of Indiana, Inc., Suite 300, 107 North Pennsylvania Street, Indianapolis, Indiana, 46204

Linley E. Pearson, Indiana Attorney General, 219 State House, Indianapolis, Indiana, 46204 (David A. Arthur, Deputy)

John Daniel Tinder, United States Attorney, 274 United States Courthouse, Indianapolis, Indiana, 46204 (Harold R. Bickham, Assistant)

James Clute, Civil Rights Division, Department of Justice, P.O. Box 23991, Washington, D.C., 20026-3991

Edith S. Marshall, Department of Justice, HOLC Building, 320 First Street, N.W., Washington, D.C. 20530

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

October 15, 1984.

Before

HON. WALTER J. CUMMINGS, *Chief Judge*
HON. JOHN L. COFFEY, *Circuit Judge*

RICHARD A. FRENCH, et al., Plaintiff-Appellees,	) Appeal from the) United States) District Court for
No. 83-2280 vs.	) the Southern) District of Indiana,
NORMAN G. OWENS, et al., Defendants-Appellants.	) Indianapolis) Division.)
	) No. 75-C-677) Hon. S. Hugh) Dillin, *Judge.*

ORDER

This matter is before the Court on the defendants-appellants' "MOTION FOR STAY" and the plaintiffs-appellees' "CONSOLIDATED MOTION TO REMAND CASE TO THE DISTRICT COURT AND NOTICE OF OPPOSITION TO APPELLANTS' MOTION FOR STAY." On consideration thereof,

IT IS ORDERED that this case is REMANDED to allow the district court to consider the parties' motions for modification and other action, as appropriate.

The parties are directed to file STATUS REPORTS on or before November 19, 1984.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RICHARD A. FRENCH, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	CAUSE NO.
	)	IP75-677-C
	)	
NORMAN G. OWENS, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM ENTRY

This cause came on for hearing upon the defendants' Motion for Enlargement of Time Within Which to Comply With Paragraphs 3 and 5 of Order. Although defendants' motion is stated to be pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, the Court construes it to be a motion for modification of a permanent injunction pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. See *U.S. v. City of Chicago*, 663 F.2d 1354, 1359, n.16 (7th Cir. 1981) (en banc).

Because this case is pending on appeal to the United States Court of Appeals for the Seventh Circuit, this Court is presently without jurisdiction to grant any modification of the permanent injunction. *Textile Banking Co., Inc. v. Rentschler*, 657 F.2d 844, 849 (7th Cir. 1981). However, having heard evidence on the defendants' motion, and in accordance with the procedures outlined in *Textile Banking*, the Court hereby declares that it is inclined to grant relief upon defendants' motion. 657 F.2d 844 at 849, n.2. Therefore, defendants are now free to rely upon this declaration in seeking leave from the Court of Appeals to remand this case for consideration by this Court of a modification to paragraphs 3 and 5 of the permanent injunction.

Additionally, plaintiffs have orally moved in open court that this Court reconsider and modify those portions of the permanent injunction decided on pendent state law grounds. In view of the very recent decision of the United States Supreme Court in *Pennhurst State School and Hospital v. Halderman*, ___ U.S. ___, 104 S.Ct. 900 (1984), it appears that some of the relief granted may be in violation of the Eleventh Amendment. The Court is advised that all parties have agreed in their briefs in the Court of Appeals that this case should be remanded to the district court for further consideration in light of *Pennhurst*. Thus, this Court hereby declares, pursuant to *Textile Banking*, that it is inclined to grant relief upon plaintiffs' motion. Plaintiffs, too, are free to rely upon this declaration in seeking leave from the Court of Appeals to remand this case for further consideration in light of the decision in *Pennhurst*.

Entered this 30 day of August, 1984.

/s/ S. Hugh Dillin
JUDGE, UNITED STATES DISTRICT COURT

Distribution: Donald R. Lundberg
Legal Services Organization
of Indiana, Inc.
107 N. Pennsylvania St., #300
Indianapolis, IN 46204

David A. Arthur
Deputy Attorney General
219 State House
Indianapolis, IN 46204

Harold R. Bickham
Assistant U.S. Attorney
274 U. S. Courthouse
Indianapolis, IN 46204

Paul S. Lawrence
Edith S. Marshall
Civil Rights Division
942 HOLC Building
1st and C, N.W.
Washington, DC 20530

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RICHARD A. FRENCH, *et. al.*, Plaintiffs,	)	
vs.	)	CAUSE NO. IP 75-677-C
NORMAN G. OWENS, Defendants,	)	
UNITED STATES OF AMERICA Amicus Curiae.	)	

ORDER

This case came before the Court on June 29, 1983 for a Compliance Conference with the Court. Attorneys for the parties advised the Court that they were needing to discuss compliance with the Order of this Court dated May 7, 1982. On August 13, 1982, after being ordered by the Court to meet and discuss implementation of the Order, the parties filed a Joint Report to the Court stating that:

> "The Counsel for the Plaintiffs and the Defendants have met with some of the Defendants and their counsel at two substantial, lengthy meetings to discuss compliance with the Order. Substantial progress has been made toward reaching agreement on several key items contained in the Order. The Defendants have made a good faith effort to move toward compliance with the Order as rapidly as current staff and resources permit. The parties plan to continue their discussion and are optimistic that some of the items in the Order can be resolved without further judicial proceedings. It is anticipated that some of the items in the Order will be, in the future, subject to judicial proceedings for a stay and for an appeal."

The Court finds, based on representations of counsel for both parties, that the progress made by the Defendants towards compliance with the Order has continued at a reasonable rate from August 13, 1982 until the present time. Specifically, based upon representation by counsel, the Court finds that the following progress has been made towards compliance with the Order:

1) Double celling has been dramatically reduced at the Indiana Reformatory to the point where approximately 40 cells are occupied by two inmates at the present time;

2) The kitchen and serving area at the Indiana Reformatory has been rehabilitated and is now in compliance with the Order of the Court;

3) The Maximum Restraint Unit has been rehabilitated and is now in compliance with the Order of the Court;

4) Substantial progress has been made toward construction of a new hospital or infirmary such that the defendants are now in compliance with or making substantial progress toward compliance with the Court's Order as it relates to medical facilities;

5) The professional medical care provider staff at the Indiana Reformatory has been significantly increased and is now in compliance with the Order of the Court.

6) The Defendants have significantly improved the access of self lock-up and protective custody inmates to programs, activities and counseling and the Defendants are currently in substantial compliance with the Order of the Court;

7) The procedures for delivery of medical care to the inmate population have been improved and the Defendants are currently in compliance with the Court's Order regarding medical procedures;

8) The Defendants have added 44 new positions for custody officers to the manning table of the Indiana

Reformatory and have filled most of those positions and the Defendants are currently in substantial compliance with the Court's Order to secure sufficient staff to safely and securely operate the Reformatory;

9) The Defendants have improved the availability of substance abuse programs and mental health services and counseling and are currently in substantial compliance with the Order of the Court as to those programs;

10) The Defendants have improved the availability of special medically prescribed diets, including the assignment of a licensed dietitian to the Indiana Reformatory and are in compliance with the Court's Order to provide special medically prescribed diets;

11) The Defendants have let bids which, when followed through to completion, will bring the living units at the Indiana Reformatory into compliance with the standards of the Indiana State Fire Marshal, and the Defendants have made satisfactory progress toward compliance with the Court's Order;

12) The Defendants have progressed towards bringing the work locations at the Indiana Reformatory into compliance with the Occupational Safety and Health Administration Regulations and are currently in substantial compliance with the Court's Order.

The Court having duly considered the Motion to Stay and the Motion to Amend filed by the Defendants, and the Court further having considered the responses thereto filed by the Plaintiffs, and the United States of America, Amicus Curiae and the Court being further advised by counsel at the conference with the Court on June 29, 1983,

NOW, THEREFORE IT IS ORDERED that the Order of this Court dated May 7, 1982, is amended as follows:

1) Paragraph 2 of the Order is amended to provide that effective October 1, 1983, and thereafter, the population of the Indiana Reformatory shall not exceed 1,750 persons;

2) Paragraph 3 of the Order is amended to provide that effective July 1, 1984, the population of the Indiana Reformatory, shall not exceed 1,375 persons, provided, however, that upon the completion of the 240 bed addition to the Indiana Reformatory which is now under construction, the population limit imposed by this paragraph shall be increased to 1,615 persons;

3) Paragraph 9 of the Court's Order is amended to provide as follows: "Each inmate at the reformatory who is in general population, protective custody or self-lock-up, shall have the opportunity to engage in recreation outside his living unit, for at least 90 minutes each day. Inmates confined to the Maximum Restraint Unit or the Administrative Segregation Unit for Disciplinary Reasons shall have the opportunity to engage in recreation for at least 60 minutes each day. Weather permitting and except in cases of emergency, all inmate recreation at the Indiana Reformatory shall be out of doors. Inmates confined to Disciplinary Segregation shall be afforded a meaningful opportunity to recreate during the 60 minutes each day out of cell, which opportunity to recreate can be out of doors, on the range if adequate equipment is provided or at some other place, provided however that inmates who abuse the right to engage in recreation can be deprived of such opportunity for a period not to exceed 30 days."

4) Paragraph 11 of the Order is amended to provide that: "The right of an inmate to call a particular witness at a disciplinary hearing may be denied by the defendants only when the record reflects a justifiable reason for refusing to call the desired witness."

IT IS FURTHER ORDERED that the Defendants' Motion to Stay the Court's Order that all inmates be provided an educational, vocational or job assignment is hereby denied.

IT IS FURTHER ORDERED that the Defendants' Motion to Stay or Amend the Order entered by this Court

limiting the use of mechanical restraints by the Defendants is hereby denied.

IT IS FURTHER ORDERED that counsel for both parties have represented to the Court that the foregoing Order disposes of all pending motions for stay and motions to amend the Order, but in the event any such motions have been inadvertently omitted from this Order, any and all other motions to amend or for stay heretofore filed by the Defendants in this action are hereby denied.

DATED this 7th day of July, 1983.

/s/ S. HUGH DILLIN

S. HUGH DILLIN, UNITED STATES DISTRICT JUDGE

Copies to:

Linley E. Pearson
Attn: David A. Arthur
Indiana Attorney General
Indiana State House
Indianapolis, Indiana 46204

Donald R. Lundberg
William E. Marsh
Michael R. Milsap
Legal Services Organization
of Indiana, Inc.
107 N. Pennsylvania #300
Indianapolis, Indiana 46204

Harold Bickham
Assistant U.S. Attorney
U.S. Courthouse
Indianapolis, IN 46204

Stephen Whinston
Special Litigation Section
Civil Rights Division
Department of Justice
942 HOLC Building
1st and C., N.W.
Washington, D.C. 20534

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RICHARD A. FRENCH MORRIS E. DOZIER, MARTIN W. BRADBERRY, HENRY C. JENNINGS, On behalf of themselves and all others similarly situated, Plaintiffs, -vs- NORMAN OWENS, Individually and in his capacity as Superintendent of the Indiana Reformatory; CLOID SCHULER, In his capacity as Executive Director of the Adult Authority, Indiana Department of Correction; GORDON FAULKNER, In his capacity as Commissioner of the Indiana Department of Correction, Defendants.	)	NO. IP 75-677-C

MEMORANDUM OF DECISION

This is a class action brought under 42 U.S.C. §1983 by four inmates in the Indiana Reformatory at Pendleton, Indiana on behalf of all persons who are or will be confined in the Reformatory. The inmates allege that the conditions, rules, and practices at the Reformatory violate inmates' rights guaranteed by the United States Constitution and by the Indiana Constitution and laws of the state. The inmates

seek to enjoin the responsible state officials from further violations.

The inmates complain of poor living conditions, inadequate medical care, lack of safety and security, bad food services, inadequate educational and vocational programs, an arbitrary system of prison discipline, and insufficient access to the courts. The inmates maintain that conditions at the Reformatory violate their right under the Eighth Amendment to the United States Constitution to be free from cruel and unusual punishment. The inmates also argue that the system of prison discipline and the access to legal materials fall short of the demands of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution. The inmates also insist that their right to equal protection found in the Fourteenth Amendment is violated because they are subject to harsher conditions and treatment than are inmates at the Indiana State Farm. Lastly, the inmates press a claim based on state law, arguing that they are being denied their right to rehabilitative and educational programs as guaranteed by Article I, §18 of the Indiana Constitution and I.C. 1971, 11-1-1.1-26. Since the initiation of the action, the statute just mentioned has been repealed. However, it and other former sections of statute defining prisoners' rights have been replaced by various sections of P.L. 120 of the Acts of 1979 (hereafter P.L. 120), having to do with the Department of Correction. The 1979 Act is codified in I.C. 11-8-1-1 through 11-13-6-9; particular sections will be considered to the extent that the evidence may tend to show a violation thereof. Rule 15(b), F.R. Civ.

Jurisdiction over this case is based on 28 U.S.C. §§1343(3) and (4), which provide for the original jurisdiction of federal district courts in suits authorized by 42 U.S.C. §1983. The inmates' request for declaratory relief is authorized by 28 U.S.C. §§2201 and 2202. Jurisdiction over the state law claims is based on pendent jurisdiction.

Procedural Background

This case began on November 21, 1975, when four inmates in the Indiana Reformatory filed a pro se complaint alleging that the conditions, rules, practices, and policies at the Reformatory were unconstitutional. This complaint was dismissed with leave to file an amended complaint.

On May 13, 1976, an amended class action complaint was filed, charging constitutional violations at the Reformatory. Plaintiffs' motion to maintain the suit as a class action was granted on December 20, 1977. The plaintiff class was defined as "all persons who are or may in the future be confined in the Indiana Reformatory, Pendleton, Indiana. The United States Government entered the case on March 10, 1978 when the Government was granted leave to participate as amicus curiae.

Trial began on July 5, 1978 and ended on August 14, 1978. Ruling was reserved pending submission of proposed findings of fact and conclusions of law by both parties and filing of post-trial briefs. The cause was reopened for the taking of additional evidence March 1-5, 1982. The Court, in the presence of counsel, inspected the cellblocks, inside dormitories, kitchen, dining hall, visitors' room, and infirmary on March 5, 1982.

General Principles

The Eighth Amendment to the Constitution of the United States prohibits cruel and unusual punishment and is applicable to the states through the Fourteenth Amendment. *Robinson v. State of California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962). There is no precise definition of cruel and unusual punishment nor are there any mechanical standards to apply; rather, the Eighth Amendment embodies broad concepts of decency and humanity against which penal measures must be evaluated. Punishment must be made compatible with

"evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, ___ U.S. ___, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981); *Trop v. Dulles*, 356 U.S. 86, 78 S.Ct. 590, 2 L.Ed.2d 630 (1957).

The ban on cruel and unusual punishment was first used to check the use of torture and other physical abuse; however, the ban has developed into a means to prevent conditions which involve the unnecessary and wanton infliction of pain or go beyond present notions of decency. There is no iron curtain surrounding prisons. Prison confinement is a form of punishment subject to the stricture of the Eighth Amendment. See *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); *Newman v. Alabama*, 559 F.2d 283 (5 Cir. 1977); *Laaman v. Helgemoe* 437 F.Supp. 269 (D.N.H. 1977).

The shifting standard of what constitutes cruel and unusual punishment is not, however, an invitation to a federal court to create its vision of an ideal prison. As the Supreme Court pointed out in *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 954 (1974), prison is "a closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incarcerated for doing so." Lawful incarceration by definition involves withdrawal of some rights and privileges. The running of prisons involves complex and often contradictory objectives. Notions of punishment and rehabilitation mix with the need for safety and security. Courts must proceed cautiously in making an Eighth Amendment judgment. See *Rhodes v. Chapman, supra.*

However, the need for discretion does not mean no judicial oversight. "Courts certainly have a responsibility to scrutinize claims of cruel and unusual confinement, and conditions in a number of prisons, especially older ones, have justly been described as 'deplorable' and 'sordid'. *Bell v. Wolfish*, 441 U.S., at 562, 99 S.Ct. 1861, 60 L.Ed.2d 447." *Rhodes v. Chapman, supra.*

In determining whether the conditions at the Reformatory are cruel and unusual, each factor cannot be viewed separately. It is necessary to look at the totality of conditions in evaluating claims based on the Eighth Amendment. As the Court of Appeals for the Fifth Circuit explained in *Gates v. Collier*, 501 F.2d 1291 (5 Cir. 1974), in upholding a district court's determination of a violation of the ban on cruel and unusual punishment:

> "Each factor separately, i.e., overcrowding dormitory barracks, lack of classification according to severity of offense, untrained inmates with weapons, lack of supervision by civilian guards, absence of a procedure for confiscation of weapons, may not rise to constitutional dimensions; however, the effect of the totality of these circumstances is the infliction of punishment on inmates violative of the Eighth Amendment, as determined by the trial court." 501 F.2d at 1309. See also *Williams v. Edwards*, 547 F.2d 1206 (5 Cir. 1977); *Johnson v. Levine*, 588 F.2d 1378 (4 Cir. 1978).

It is a familiar principle that where there are possibly dispositive state law claims pendent to federal constitutional claims, the state claims will be dealt with first. *Hagans v. Lavine*, 415 U.S. 528, 94 S.Ct. 1372, 39 L.Ed.2d 577 (1974); *Hillsborough v. Cromwell*, 326 U.S. 620, 66 S.Ct. 445, 90 L.Ed. 358 (1946); *Siler v. Louisville & Nashville R. Co.*, 213 U.S. 175, 29 S.Ct. 451, 53 L.Ed. 753 (1909). This rule will be observed insofar as it is possible so to do.

Findings of Fact

The Indiana Reformatory is a maximum security correctional facility housing adult male felons. It was built in 1923. The Reformatory proper is surrounded on three sides by high walls, with the fourth side enclosed by the cellhouse building. There are some buildings outside the walls, including a dormitory for inmates and a farm operation. The Reformatory has 35 acres within its walls and 1,900 acres in the entire institution; few inmates are permitted outside the walls.

The number of inmates housed in the Reformatory in August, 1978 was 1,215. By January 27, 1982 it had risen to 1,972.

I. Housing

> *"Every owner of an animal within the city shall see that his animal ... has proper ... shelter and ventilation, including quarters that are protected from excessive heat and cold and are of sufficient size to permit the animal to exercise and move about; such exercise enclosure shall be no smaller than twenty-four (24) square feet in area..." Sec. 6-7, Indianapolis Code (City of Indianapolis, Indiana).*

Inmates are housed in three cellhouses and two dormitory buildings inside the walls, and one dormitory located outside the walls.

There are at present 297 usable cells in J cellhouse, 317 in H cellhouse, and 319 in G cellhouse. Each cellhouse consists of an inside cellblock in which two rows of cells on three tiers or floors are in the middle of the cellhouse, set back from the outside walls of the cellhouse. The cells are located back to back and are separated by a service area which runs the length of the cells and where wiring and plumbing are located. A row of cells on a particular tier is known as a range.

The cells in G and H cellhouses contain 44 square feet, and cells in J cellhouse contain 47.6 square feet. The cells have three solid walls and a barred front. Each cell contains a sink with cold running water, an uncovered toilet, one or two lockers, and one or two beds. The furniture and fixtures take up half the floor space. The back of each cell contains a 96 square inch grate with 12 to 15 holes in it, which is to serve as a ventilation duct. The grates are not cleaned and are clogged with dirt and lint.

The living quarters do not have adequate positive ventilation systems. The heat comes into the cellhouses in

the lower part of the outside walls. There is no mechanism to disperse the heat to the cells. There is no summertime forced-air system to the cells. The cold and hot air systems are inadequate. For the most part the manipulation of the windows and the heating systems in the living quarters is the method of ventilation control. Many of the window opening and closing devices are defective. Consequently many windows must be sealed in the winter, disallowing any opportunity for manipulation when it is found necessary. The cells are too cold in winter and too hot in summer.

An attempt has been made in the cellhouses since 1978 to improve in-cell lighting. There have been considerable wiring alterations and fluorescent bults have been substituted for incandescent bulbs. Unfortunately this has not always resulted in improved lighting in the individual cells. In general, in-cell lighting is inadequate. Many, if not most, of the fluorescent fixtures, since initial issuance, have been replaced by incandescent bulbs of 40 or 60 watts. The result, no improvement. Many outside windows are dirty which diminishes the amount of natural light supplied to the cell and dormitory areas. Many cells have dark colored paint, have very dirty walls, walls practically covered with posters and the like, all of which adversely affect the amount of light available to the inmate. Some light fixtures are in need of repair.

Many cells have toilet stools and sinks which, because of age and deterioration, are literally uncleanable. Many cells need paint. Many shower areas contain an accumulation of grime from the combination of water with detergents, and even have a noticeable mold growth. Cells are wet mopped only once a week, often without the benefit of cleaning materials. Showering is done daily by ranges, with 15 minutes being allowed for showering including travel time from the cell to and from the shower area, located at one end of the first floor of each cellhouse. Given the number of men using the showers at the same time and the number of showerheads, the time allowed is inadequate.

Defendants maintain a separate housing unit for inmates who are considered to require segregation from the general inmate population. This unit is known as administrative segregation or "A.S." This unit consists of 100 cells in two tiers, arranged back to back. There are 26 cells on the lower tier and 24 cells on the upper tier in each section. The cells have the same size, appearance, and furnishings as the cells in the cellhouses.

One side of administrative segregation is used for inmates sent to the unit as discipline for infractions of Reformatory rules. (The "DLU".) The other side of the two-tier cellblock is used to house three types of inmates: those who are confined in segregation for their own protection (self-lockup), those who are under investigation for violating an institutional rule, and pretrial detainees transferred to the Reformatory (safekeepers).

The unit known as isolation or the maximum restraint unit ("MRU") is on the ground floor of the administrative segregation building. The MRU is used to provide even more secure confinement than disciplinary segregation. Each of the cells in isolation has a barred door which is covered with mesh which is flush with the wall of the cell. There is also a solid metal door which has a 4" x 6" peephole as the only means of entrance of light. This door is controlled by the correctional officers and is shut at times as a means of disciplining inmates. One 40 watt light bulb is located above the door and is controlled by a switch located outside the cell. The toilet and lavatory fixtures are particularly scabrous.

In 1978 each of the cells had a single occupant. According to the "Master Plan" of the Department of Corrections, put in evidence at that time, the anticipated rise in prison population would be met by the construction of new facilities in both northern and southern Indiana. Indeed, the population at the Reformatory (1,215 on August 11, 1978) was to be reduced by 1981. Unfortunately, the Legislature has never funded the program, with the result

that the population has zoomed to nearly 2,000 and double-celling is rampant.

As of January 27, 1982, 310 of the 933 available cells in G, H and J cellhouses — 33% — had been converted to double cells by the addition of an extra bed and locker, and 26% of the 100 administrative segregation cells had likewise been so converted. This reduced the gross available space per man to less than 24 square feet, and the net space to approximately half this amount. The minimum amount of square feet per man thought to be necessary by the expert witnesses who testified, including defendants' experts, is 50 square feet. Considerably more may be required depending upon how much time per day the inmate is required to spend in his cell.

In the A.S. unit the cells have less height than those in the regular cellblocks, with the result that it is physically impossible for the doublecelled occupant of the upper bed to sit erect. There is no room in a double cell for a chair or stool, so unless the occupant of the upper bed has permission to sit on his cellmate's bed (frequently not granted) he cannot sit except upon the floor or the coverless toilet stool. It is only those in protective custody who have been doublecelled, so that those who have committed no infraction of the rules are treated more harshly than those in the DLU.

Besides the cellhouses, inmates are housed in several dormitory units, two located inside the walls and one located outside the walls. One inside dormitory is referred to as the K dormitory complex and consists of six separate rooms on two floor. All rooms are double bunked, and nearly all bunks are occupied.

The sizes of the dormitories and number of bunks in each are:

K-1	—	3,134 square feet	—	48 bunks
K-2	—	1,892 square feet	—	30 bunks
K-3	—	2,509 square feet	—	48 bunks
K-4	—	2,509 square feet	—	48 bunks
K-5	—	7,988 square feet	—	112 bunks
K-6	—	6,438 square feet	—	96 bunks

A part of the area in each room in K dormitory is a common area where tables are located for playing cards, checkers, etc. Each room has one television set, and the two larger rooms have two. However, the entire area is very crowded, with bunks as close together as 24 inches or less. There are overhead plumbing leaks. Showers are unclean, toilet seats broken, and some lavatories do not function properly.

Public health standards recommend that an inmate housed in a dormitory be afforded a minimum of 75 square feet of living area and an additional 35 square feet of activity space. None of the rooms in K dormitory meet this standard, or even come close to it.

The other inside dormitory is called O dormitory. It contains one large room, O-1, and eight relatively small rooms. This space was not constructed for housing purposes, but has been converted for that use since 1978 because of the influx of new prisoners. O dormitory was opened May 1, 1981. The nine O rooms together contain 8,618 square feet of space, housing 210 persons. Fifty persons occupy 3,190 square feet in room O-1, while 160 persons are housed in the remaining 5,428 square feet — an average of 33.92 square feet each, including that contained in the common area in each room, and that allotted for toilets, showers, and lavatories. As in K dormitory, each room does contain a common area, with tables, and each room contains a television set (2 in O-1).

Each inmate in the K dormitories and in O-1 is furnished with a chair. However, it is so crowded in the other rooms in O dormitory that only 77 chairs are furnished for the 160 persons. In some of the rooms, the bunks are only twenty inches apart. All rooms are poorly ventilated, with the result that some are stifling, uncomfortable and odorous. Showers and toilets in O-1 and the second floor area are in poor condition.

The outside dormitory is likewise overcrowded and has other major deficiencies. However, it is undergoing some

major remodeling, so no further comment will be made as to it. It is occupied by inmates who are minimum security risks.

II. Exercise and Recreation

"(a) To the greatest extent possible, consistent with the security of facilities and programs and departmental resources, the department shall establish recreational and cultural programs and activities designed to develop and maintain the physical and mental health of confined persons.

(b) The programs and activities should cover a wide range of interests and talents and include:

(1) Meaningful, relevant reading material;

(2) Reasonable availability of radio and television;

(3) Reasonable opportunities to engage in musical endeavors, painting, crafts, and other creative pursuits; and

(4) Availability of physical recreation and sports." Indiana Code 11-10-11-1.

"A confined person shall be given a reasonable opportunity for physical exercise outside of his immediate living quarters and out-of-doors if feasible." Indiana Code 11-10-11-2.

Public Law 120, from which the above is excerpted, reads well and shows that the Legislature recognizes "evolving standards of decency." Unfortunately, defendants appear to be in violation of State law at the Indiana Reformatory, partly because of lack of funding, partly because of overcrowding, and partly because of a lack of planning on the part of the defendants.

For those inmates who are in the general population and have work or study assignments, recreation during good weather months is adequate. During this time of year they are afforded approximately 90 minutes of outdoor recreation per day, in addition to the time spent out of their cells at meals and at their jobs. The outdoor facilities include two baseball diamonds, an area for football or soccer, horseshoe

pits, four handball courts, two basketball courts, a volleyball court, a shuffleboard area, and room for jogging.

In the winter months and on rainy days, however, exercise is limited to the so-called fieldhouse, which is the sole facility for indoor recreation. The fieldhouse contains a tiny gymnasium simultaneously used for basketball, weightlifting, ping pong, punching bags, and television. There are four television sets hung above the bleachers two on each side of the basketball floor. When basketball activities are taking place, or even when inmates are "pumping iron" or punching bags, it is impossible for the audio portion of the television program (or programs) to be understood. The overall impression is of bedlam.

There is an auditorium in the building, but it is not used because it is in a state of disrepair. So much for "musical endeavors, painting, crafts, and other creative pursuits."

Moreover, as of early 1982, at a time when the prison population was 1,972, only 64.4% of the inmates had assignments. The balance included 402 persons in "idle-hold" status, meaning that they were in the general population but without a job through no fault of their own. There were 277 persons in the A.S. unit and the MRU, 95 of whom were self-lockups. These persons have much less opportunity for meaningful exercise or recreation outside their living quarters.

Persons in "idle-hold," for example, are presently allowed a 90 minute recreation period each weekday, and another hour every other Saturday or Sunday. They are allowed 45 minutes for each meal, and are afforded a 10 minute shower period each night after the recreation period. Otherwise, they are locked in their cells all day. In short, they spend approximately 20 hours per day in the cramped confines of a cell or dormitory, frequently being doublecelled!

Prisoners on hold status are not permitted to visit the library (other than the law library) and are not permitted

to check books out of the library. So much for "meaningful, relevant reading material." Some prisoners on idle-hold have been seeking a job for more than a year, without success.

Those in administrative segregation are even less favored — including self-lockups who may have requested being locked up for their own protection because of suspected cooperation with their jailers. They presently are permitted to go to the gymnasium two days a week for a period from 8:00-10:30 a.m., and to the commissary once a week for 45 to 60 minutes. They are allowed to make one 5 to 10 minute phone call per month. Otherwise they are locked up all the time, including meal time, as their meals are brought to them and served in their cells. Those who are "red-tagged" are held in their cells 24 hours per day except for a shower. When the weather permits outside exercise, they are allowed 30 minutes per day in a small fenced area just outside the A.S. building. The area is about 30′ x 50′ and no equipment is furnished other than a basketball, checkers and a checkerboard.

Although the dormitories have television sets, none is available in the cellblocks. There is no day room space provided in the cellblocks whatsoever, although it would seem that it would be possible to utilize an area in the hallway outside the first floor ranges for a day room, and supply television in such areas. The only radio facilities in the cellblocks are jacks into which a radio may be plugged; there is a choice of three stations.

III. Medical Care

"(c) A committed person is entitled to:

(1) Medical care, medical personnel, and medical facilities of a quality complying with applicable state licensing requirements;

(2) First aid or emergency medical treatment on a twenty-four-hour basis; and

(3) Mental health care by a psychiatrist or psychologist." Indiana Code 11-10-3-2.

"The department shall provide for the care and treatment of every committed offender who is determined to be mentally ill by a psychiatrist employed or retained by the department. To provide that care and treatment, the department may:

(1) Establish and operate its own mental health facilities and programs;

(2) Transfer offenders to the department of mental health, subject to the approval of the commissioner of mental health; or

(3) Contract with any city, county, state, or federal authority or with other public or private organizations for the provision of care and treatment." Indiana Code 11-10-4-2.

A. Medical Services

The quantity and quality of medical care at the Reformatory has retrogressed from marginal in 1978 to inadequate in 1982. Then and now there is only one medical doctor, Dr. Choi, who theoretically is on call 24 hours per day, and who also serves as medical director. This person is a native of Korea who received the bulk of his formal medical education in that country. Because of language problems, he has a great deal of difficulty in communicating with many of his patients. Assisting him are three physician's assistants ("P.A.") and nine medical technicians ("Med.Tech."). One P.A. and two Med.Techs. have been added since 1978, but on the other hand in 1978 the institution had the services of three additional medical doctors, working on contract, and now has but one, a urologist, for one evening a week. Meanwhile, the prison population has increased by 62%.

There are also two dentists who work at the Reformatory full time. The press of work is such that they have no time for preventative or restorative work, but are largely limited to doing fillings and extractions. The medical complement is rounded out with one pharmacist, two clerks, a part time optometrist, and a hospital administrator who is about to leave.

The medical facility is contained in a separate two-story structure of brick construction within the walls. The first floor contains a sick call area, administrative offices, pharmacy, emergency room, dental department, segregation section, radiology unit and an unused kitchen. The basement and first floor hallway are used as a waiting area for those attending sick call. On the second floor, there is an infirmary section for inpatients consisting of a ward and rooms for medical isolation. There are also areas for laboratory and medical staff offices, but the laboratory is not is use.

Sick call for the administrative segregation and the MRU consists of a medical technician who goes to the cellhouse and communicates through a locked door. Dr. Choi walks through the area once a week but rarely examines the inmates. Those on hold status in the general population sign up on a sheet with the cellhouse clerk. A medical technician reviews the sheet and decides who should be given over-the-counter medications or called out to see the physician assistant, or some other option. Those in the general population group who have jobs sign out with their work supervisor and come to the infirmary where they are seen by a medical technician — a classification not recognized by Indiana laws. The medical technicians have had military corpsman training. This training emphasizes first aid but does not include physical diagnosis, which is part of the physician and physician assistant training programs.

The medical technicians have some protocols but are also diagnosing and treating things not detailed in their protocols. In addition two or three medical technicians see between 150 and 190 patients in a few hours. Since they must review the medical record and write a note in it, the number of seconds allotted to talking to the inmate — let alone examining him — is so insufficient as to guarantee inadequate services. Of the 190 requests per day the physician sees about ten patients per day in a two hour

period. A physician assistant sees about 20 to 30 patients per day in a two hour period. He also performs employee exams, reviews inmates' records prior to clemency hearings, sees new commitments, does pre-work release reviews, counter-signs prescriptions the medical technicians sign, and discusses patients with Dr. Choi when he has questions.

This sick call system is based on relatively untrained people being asked to diagnose and refer or treat without the proper training, supervision or time to perform such evaluations. Those inmates in lock down status have even more difficulty getting an adequate exam in the appropriate setting. Problems may be undiagnosed or inadequately treated until they become serious.

Inmates with minor ailments who require confinement to bed but no nursing care, for a short term are sent to the second floor infirmary at the institution. This room contains two rows of old beds. There is no mechanical ventilation, and no medical personnel are stationed in the ward.

Inmates with significant illness or injury requiring more specialized physician consultation or care or skilled nursing are transported to the Wishard Memorial Hospital, a unit of the Indiana University Medical Center. Transportation is provided for by van or an ambulance and usually involves about 40 minutes of travel. There are usually, at any one time, approximately 10 to 12 patients from the Department of Corrections retained at this hospital. Wishard also provides all types of outpatient consultation and during an average week the Reformatory may send 10 to 15 patients to Indianapolis for this purpose. In some instances where nearer facilities are necessary, hospitalization is utilized in nearby Anderson, Indiana.

The record is replete with evidence of inadequate medical care. For example, one inmate received a blow in the eye during a basketball game on April 28, 1978.

Although he complained constantly, he was put off for one pretext or another until he was finally seen at Wishard Hospital on May 30, 1978, and a detached retina was found. He was operated on June 2, which was three weeks too late to save the eye. Another, who was taking penicillin for rheumatic heart disease when he entered the Reformatory, did not receive another prescription for 18 months. Another sought help for well over a year for a cough, severe chest pains, and difficulty in breathing. He received no help except cold medicine and cough drops from the medical technicians. He was finally referred to Wishard, where an operation disclosed a mass the size of a baseball in his right lung. Others have gone for months without detection of communicable tuberculosis.

All expert medical witnesses, including those of the defendants, were agreed that the institution should have at least two full time equivalent physician positions (80 physician hours per week). More physician assistants are also needed. The fact is that another full time physician has been authorized for years, but the Department of Corrections has been unable to fill the job because of an unrealistic wage scale. It would seem that this problem could be surmounted rather easily if the Department would simply raise its salaries for physicians.

B. Mental Health Care

In 1978 the mental health care staff at the Reformatory consisted of one full time doctoral level psychologist, one full time masters level behaviorial clinician, one consulting psychiatrist at four hours per week, and two consulting psychologists at eight hours each per week to conduct group substance abuse counseling. Presently, the mental health care staff consists of one full time clinical psychologist, one full time masters level behavioral clinician, one consulting psychiatrist at three hours per week, and one consulting psychologist at eight hours per week to conduct individual counseling and group therapy.

The behavioral clinician has other duties unrelated to the delivery of mental health care to inmates that take up approximately one-half of his time. The consulting psychiatrist, Dr. H. Y. Suh, presently visits the Reformatory three hours per week and sees a total of three patients weekly.

Thus once again it may be seen that despite the surge of a 62% increase in population since 1978, the amount of staff available for care in the field of health — mental health, in this instance — has actually decreased! There appears to be virtually no oversight in the mental health area by anyone with a degree in medicine, whether psychiatrist or general practitioner. The psychologists on full time duty, who cannot prescribe medicine, have an anti-medical bias. This has resulted in psychotic inmates being deprived of medication and chained to a bed with all four limbs completely restrained in spread-eagle fashion as "treatment" when they act out their delusions. This latter practice, which has developed since 1978, was condemned by experts called by both sides and characterized as "medieval," and without parallel in any prison in the United States. This Court has heretofore issued a preliminary restraining order enjoining such practice, and finds that the same should be made permanent.

The Court finds from the evidence that the incidence of psychiatric disorders within prisons such as the Indiana Reformatory is that 2 to 4% will be acutely psychotic and require intensive hospital psychiatric care, and an additional 6 to 8% will be less severely psychotic and require convalescent hospital care or outpatient treatment. The only facility operated by the Department of Corrections for acutely psychotic prisoners is the Westville Psychiatric Unit at Westville, Indiana. There is no procedure for the rapid transfer of those persons requiring hospital care to such unit. When inmates are returned from Westville after treatment there is no regular follow-up care at Pendleton, and psychotropic medications are frequently

discontinued, with the foreseeable result that the symptoms recur and the patients once again get out of control.

During the six month period ending December 31, 1981 an average of 47 men per month were seen on a formal referral or follow-up basis, while during the same period of time an average of 64 men per month were on the waiting list and had not been seen for a period of two weeks. (During most of this period the M.A. psychologist was the only full time staff member.) Far fewer psychotic inmates have been identified than is to be expected because of inadequate screening. There is no mental health person on duty from 4:00 p.m. to 8:00 a.m. Approximately 70% of all inmates have a history of substance abuse, but only 5 are in a substance abuse program.

According to testimony which the Court finds reliable, at a minimum the mental health staff should provide from 40 to 60 hours of psychiatric service per week, and should have an additional full time clinical psychologist, four full time social workers, and three additional behavioral clinicians. In fact, a position for an additional clinical psychologist is presently authorized, but unfilled for the usual reason — the salary offered is noncompetitive. Increases in the Reformatory budget to obtain more psychiatrist time have been requested annually since 1968, and have annually been rejected.

The Court finds as a fact that the inmates in the care and custody of the defendants are not being furnished with appropriate health and mental health care as contemplated by Indiana law.

IV. Academic and Vocational Education

"The department shall, after consulting with the state superintendent of public instruction and the state board of vocational and technical education, implement academic and vocational education curricula and programs for committed offenders, by utilizing

qualified personnel employed by the department or by arranging for instruction to be given by public or private educational agencies in Indiana...." Indiana Code 11-10-5-1.

"The department shall establish, maintain, and operate industry and farm programs for offenders designed to equip the participant with a marketable skill which will provide to him a means of earning a livelihood upon his return to the community...." Indiana Code 11-10-6-2.

"(a) A confined person may be required to keep his own living quarters clean and orderly.

(b) A confined offender may be required to:

(1) Perform general maintenance work and assist in providing other services essential to the administration of the facility or program; and

(2) Work in a business, commercial, industrial, or agricultural enterprise operated by the department.

(c) A confined offender may not be denied the opportunity to participate in educational, training, or voluntary employment programs solely because of compulsory work." Indiana Code 11-10-6-3.

The educational programs at the Reformatory consist of Adult Basic Education (A.B.E.), General Equivalency Degree (G.E.D.), and college correspondence courses. Some college courses are taught inside the Reformatory by professors from Ball State University. All A.B.E. and G.E.D. instruction is at state expense. Inmates in protective custody are not able to participate in educational programs, except for correspondence courses.

An associate degree can be obtained in Liberal Arts, Legal Assistance, Business Administration, or Criminal Justice upon successful completion of a two year program. Inmates must pay at least part of the cost of tuition, fees and books of the college programs. Since inmates in educational programs are paid 40 cents per day, the lowest inmate pay rate at the Reformatory, many inmates cannot participate in the college programs because of inability to pay.

The library is open from 9:30 a.m. to 7:30 p.m., except during meal times. However, as previously stated, those on idle-hold status are not permitted to use it. Those on self-lockup are likewise not permitted to go to the library, but may have books delivered to their cells.

As of January 12, 1982, 260 of 1972 inmates, or 13.2% of the population, were assigned to education. This is a somewhat greater number, but a smaller percentage than was engaged in educational activities in 1978 (then 218 inmates — 17.1% of population). Here again is reflected the failure of defendants, and more particularly of their principal, the State of Indiana, to expand programs to keep up with the rapid increase in population. The educational programs are adequate, as far as they go, but the failure to afford educational opportunities to those prisoners in idle-hold and self-lockup status is not in compliance with State law.

The picture with regard to vocational and work programs is more of the same — some programs, but far too few to comply with I.C. 11-10-6-2. In 1978, 91.92% of all inmates had an assignment, either in prison industries, vocational training, education, or in an institutional job. By January, 1982 that percentage had shrunk to 64.4%. In absolute numbers, those employed had risen from 1,172 to 1,270, so that again the difficulty is in the failure to expand programs to fill the needs of an expanded population.

There are twelve factories or shops in the Industries Division, which include five wooden furniture factories, a metal furniture factory, and a dry kiln, a freight house, a mattress factory, a sign shop, a tag shop, and a tailor shop. They presently employ 230 inmates, which is 30 more than the authorized number of positions.

There are 13 different vocational shops, down from 15 in 1978, which teach such skills as auto body work, upholstery, printing, bricklaying, welding, etc. These programs take anywhere from four months to one year to complete, and there are no advanced courses available. Inmates who have completed vocational training in one

area are discouraged from taking courses in any other area. There are 136 inmates in these programs, six *less* than the number enrolled in 1978.

Industrial safety and hygiene are poor, with most shops and factories out of compliance with Occupational Safety and Health Administration (OSHA) minimum standards. Inadequate ventilation is a particular problem in the furniture factories and paint spray booths. Toxic glues are used without adequate ventilation, and without benefit of respirators or gloves, as required by OSHA regulation. Noise levels in some areas far exceed the maximum allowable.

V. Safe and Healthful Environment

"(a) The department shall adopt policies and procedures for the protection of committed persons, including:

(1) The monitoring of committed persons whose presence in the general population of a facility or program constitutes a threat of physical danger to other persons;

(2) Reasonable searches of committed persons, facilities and premises to reduce the number of weapons and dangerous items;

(3) Adequate staff supervision of committed persons, including living quarters;

(4) Maintenance of accurate records regarding incidents of violence; ..." Indiana Code 11-11-6-1.

"(a) The facilities of the department must comply with federal and state health, sanitation, safety, and fire laws applicable to dwellings, food establishments, eating facilities, and public buildings." Indiana Code 11-11-6-2.

As just mentioned above, the shops and factories violate OSHA standards in many respects, and are thus unsafe. Of more importance however, since a much larger number of inmates is involved, is the failure of the institution to meet state and federal health, sanitation, safety and fire laws.

A. Fire Protection

The last report of the State Fire Marshal in evidence, dated July 20, 1981, listed 122 separate remedial activities necessary to place all buildings and procedures in compliance with state fire laws and regulations. Compliance was ordered to be performed within 30 days.

On September 21, 1981 Warden Owens responded to the Fire Marshal, as directed. His response reflects compliance, or compliance in progress as to the more simple requirements, such as removing excess flammable liquids from the shoe shop and installing approved exit lights in nine buildings. However, practically all substantive requirements requiring the expenditure of money were met by comments such as "When funding becomes available," or "To be completed with Master Plan Renovation." In other words, perhaps never.

Typical outstanding violations of the fire laws as applied to public buildings are as follows: the school building, all three dormitories, all three cellhouses, the infirmary, the fieldhouse, and the second floor of the officers' quarters all require a fire alarm system with interconnected smoke detectors; a second egress is required from the library, certain classrooms, both floors of the dormitories, all cellhouses, the second floor of the officers' quarters and from dead end corridors in the infirmary; spray booths in three of the furniture factories and the auto body shop do not meet standards nor do the paint storage areas. Many more deficiencies exist.

B. Food Services

Meals for the general population are served three times a day in a central dining room or mess hall, and are based upon a master menu cycle of five weeks. The menus provide adequate variety and sufficiently meet nutritional standards. The inmates eat with plastic utensils.

Those inmates confined in the various segregation units

are fed the same diet as those in the general population, and the food is prepared in the same kitchen. Food is served to these inmates in their cells, after being heated on a hot cart at the unit. However, there is no dietician on the staff, and those inmates who require special diets, such as diabetics, must rely on the food service manager and an inmate assigned to this task. Special diets are not adequate.

Sanitation problems have plagued the Reformatory food service operation in the past, and continue to do so. The last reported inspection by the Indiana State Board of Health, dated January 7, 1982, reflected violations in 15 out of 44 items inspected in the main kitchen. The main kitchen, commissary, and outside storage facility were all noted to have mice and roaches.

Inspection of the kitchen on December 9-11, 1981 by a nationally recognized health consultant and registered sanitarian revealed a kitchen floor which is literally uncleanable because of holes, cracks, crevices, missing tile and gross porosity. Some of the ceiling is missing. Many of the walls are crazed and cracked. Live cockroaches and fresh mice droppings were observed in the downstairs storeroom. Many pieces of large equipment (pots, pans, large kettles) are in such poor repair that they cannot be cleaned by ordinary methods and hence are not sanitized. Ranges, hoods, cutters, choppers and refrigerators all needed cleaning. In the dining room, the food-warming tables were not operative and therefore the hot foods were below safe temperatures.

Fortunately, this is one area in which State action is being taken to correct the hazardous situation now existing. The General Assembly has appropriated $12,000,000 for construction and rehabilitation at the Reformatory, and funds have been allocated to remodel the kitchen completely, so as to bring it into compliance with public health standards. It is expected that bids on this project will be taken in June, 1982.

C. Environmental Health Problems

The presence of roaches and rodents in the kitchen and food storage areas has already been mentioned. These pests are under control in the housing areas. However, the dormitory areas and one cellblock have heavy fly populations during fly season. Window in such facilities are not screened; when open, they admit flies, flying insects and birds. A standing order issued to the Reformatory fire chief in 1977 was to hose down the cellblocks weekly to remove bird excrement. Birds in living areas create the risk of transmission of histoplasmosis to inmates.

The plumbing chases throughout the institution, with few exceptions, are dirty and not well maintained. These areas, if not properly maintained, may be conducive to the harborage and multiplication of insects, rodents, and other vermin. These deficiencies, as well as the inability to clean toilets and sinks and the absence of hot water in cells, all constitute serious potential threats to personal health.

The overcrowding of inmates, coupled with the grossly inadequate ventilation, likewise invites public health concerns. One method to control the spread of communicable diseases which are transmitted via the air is to control the ventilation; at the Reformatory, this type of control does not exist. The conditions which exist are conducive to the easy spread of respiratory and droplet infectious diseases. Other illnesses attributed to poor ventilation include problems of headaches, nausea, and nasal-pharyngeal irritation.

Inadequate lighting makes improved sanitation more difficult, and increases eyestrain when visual tasks are involved. It is incongruous that persons in the A.S. unit, who have the least time out of their cells and must thus rely almost wholly upon reading as recreation/education, are given the light bulbs with the smaller wattage. This smacks of punitive action. Still another problem is disintegrating asbestos insulating material, which raises the threat of asbestosis.

D. Protection of Committed Persons

Security of inmates from physical attacks by other inmates is a problem at the Reformatory. Severe forms of violence, including stabbings, bludgeoning and homosexual rapes, occur with distressing frequency. A number of these incidents have resulted in fatalities. Lesser forms of violence, such as harassment, threats, intimidation, striking and beating may be said to be routine. There are two primary causes for these problems: overcrowding and insufficient staff.

All witnesses, whether called by plaintiffs or defendants, agreed that the Reformatory is severely overcrowded. It is at least 50% over design capacity. The dormitories, in the words of one witness, are overcrowded to the point of bumping and elbow knocking. Coupled with the extremely poor ventilation, resulting in more discomfort, the situation is one of constant aggravation.

When the dormitories became double bunked, gambling commenced, racial tensions increased, more fights broke out, and homosexual activities increased. The double bunking creates a visibility problem for security officers, inasmuch as clothing, sheets and blankets draped from a top bunk cut off the view beyond them. Visibility may also be impeded by inmates sitting on the top bunk with their legs hanging over the side.

One of defendants' employees, the clerk of H cellhouse, described the change of conditions in the cellhouse since doublecelling has been instituted. In his words, tension has been increased 100% to a "blowing" level, sanitation has gone downhill, and much fighting and arguing takes place. The cellhouse formerly settled down for the night at from 11:00 to 11:30 p.m., but the noise and disturbances have now increased to the point that it does not settle down until from 2:30 to 3:30 a.m.

The defendants themselves, as reflected by the Department of Corrections Master Plan, have called for one person

per cell of 80 square feet, and a dormitory population not exceeding one person per 130 square feet of net area. This is a humane policy, in keeping with evolving standards of decency and the guidelines adopted by leading penal authorities in this country. In contrast to these self-imposed guidelines, the defendants are now holding hundreds of grown men in custody for as much as 23 hours per day in less space than is required by law for a dog or a cat in the City of Indianapolis. (See Sec. 6-7, *Indianapolis Code, supra.*)

No officer is stationed inside a dormitory room. Rather, one officer is located on each floor of O and K dormitories, in the hallway outside the dormitory. The officers patrol the hallways and look into the dormitory rooms through windows facing on the hallways; of course, they may enter the rooms when they choose, but they seldom do so. In either event they are not able to see to the back of the rooms because of the problem mentioned above concerning clothing, etc., hanging from the bunks. Room 0-9 and 0-10, converted storehouse rooms, can scarcely be seen into at all from the hall. The doors to these rooms are locked, and the inmates are in charge. The officers have standing orders not to enter a dormitory room to quell a disturbance without getting assistance, but they have no way of communicating with each other except by shouting.

The day shift in each cellhouse (7:00 a.m.-3:00 p.m.) calls for a sergeant and three correctional officers. The sergeant has a walkie-talkie radio by which he can communicate with officers elsewhere in the institution, but the cellhouse officers have no way of communicating with each other or the sergeant other than word of mouth. Although the officers patrol the ranges, they restrict such patrols to the lowest floor. From this position they cannot see to the back of the cells on the upper two floors. In short, if an inmate on an upper tier is attacked in his cell by a cellmate, or by any occupant of the range during a general prisoner movement, such as going to work, eat, or shower, he has two chances of

obtaining timely assistance: slim and none. The practice in most prison systems is to have a correctional officer stationed on each range or tier of a multi-tiered cellhouse.

All things considered, it is not surprising that the number of persons asking to be placed in administrative segregation as self-lockups has increased sharply since the beginning of doublecelling. There are three times as many persons in self-lockup now as in 1978, in absolute numbers, and 85% more in terms of percent of the total population. It will be remembered that these inmates are not in violation of prison rules or regulations, but in general are those youthful and first offenders threatened by sexual attacks, or other prisoners who fear for their lives because of some real or fancied violation of the prisoners' code, or an outside vendetta carried over into the prison, etc. The Court has no doubt but that the number of self-lockups would be substantially higher but for the policy of the defendants in denying them access to educational, industrial, or vocational programs, and in confining them all day in double cells.

VI. Prison Discipline

The disciplinary policy and procedures for adult offenders is set out in a booklet published by the Department of Correction, a copy of which is in evidence. The rules set out therein became effective May 15, 1980, and generally track the procedures required by the constitution for prison disciplinary systems, as outlined in *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) and *Hayes v. Walker*, 555 F.2d 625 (7 Cir. 1977).

The only perceived omission from the rules laid down in the above cases is that the Conduct Adjustment Board ("CAB") is not required to put in writing the reason why it refuses to call a witness or witnesses sought to be called by the offender in those cases where it declines to call such a witness. This should be corrected. Also, as a matter of practice, the CAB ordinarily meets during the first shift at

the prison and frequently refuses to call as witnesses prison personnel who work on another shift. Neither possible inconvenience to such a person, nor the necessity of paying him overtime if he is required to come to the prison and testify is sufficient to excuse this practice.

The Court finds that, except as set out above, the plaintiffs have failed to carry their burden of proving that the system of institutional discipline in force at the Reformatory is in violation either of state or federal law.

VII. **Access to the Courts**

In *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977), the Supreme Court reaffirmed its decision in *Younger v. Gilmore*, 404 U.S. 15, 92 S.Ct. 250, 30 L.Ed.2d 142 (1971), and held that access to the courts through the provision of law libraries or adequate assistance from persons trained in the law is constitutionally mandated.

The Court finds that inmates at the Reformatory are provided meaningful access to the courts. The law library is open from 9:30 a.m. to 7:30 p.m., except during lunch and dinner. The library is sufficiently stocked with reporters, statutes, and reference books. The library is staffed by inmate clerks who provide assistance to other inmates. These inmate clerks can take requested legal materials to inmates on segregation and assist them in their research. Inmates assigned to the outside dormitory have access to the law library one-half day a week and can obtain greater access upon request and a showing of need.

Thus, the Reformatory provides not only an adequate law library but has a system of inmate clerks who assist other inmates in research and drafting. While these clerks have limited legal training and often have too many inmates to counsel, this assistance, combined with the library, provides meaningful access to the courts.

Conclusions of Law

Based upon the foregoing findings of fact, the Court, in the exercise of its pendent jurisdiction, concludes as a matter of law that the defendants, in their official capacities, are in violation of each of the following Indiana statutes with respect to their treatment of plaintiff class: Indiana Code, Sections 11-10-3-2(c), 11-10-4, 11-10-5-1, 11-10-6-2, 11-10-6-3, 11-10-11-1, 11-10-11-2, 11-11-6-1, and 11-11-6-2. None of the statutes in question specifically covers the question of doublecelling in the cellhouses or that of the use of doubledecked bunks in the dormitories (previously referred to herein as "double bunking").

The defendants argue, on the authority of *Rhodes v. Chapman, supra,* and *Bell v. Wolfish, supra,* that there is no constitutional prohibition against the use of doublecelling or double bunking. This is true. However, the two cases relied upon merely serve to point up specific situations in which the facts did not demonstrate a violation of the Eighth Amendment's ban on cruel and unusual punishment. In *Bell v. Wolfish* the complainants, pretrial detainees, were housed two to a cell in cells having a total floor space of approximately 75 square feet during the period 11:00 p.m. to 6:30 a.m. (plus time for two brief head counts). Thus they were confined to their cells only during normal sleeping hours, and during the balance of the day were free to move about between their rooms and the common areas. The place of confinement was the Metropolitan Correctional Center ("MCC"), a newly erected facility in the Southern District of New York, described by the Supreme Court as follows: "The MCC differs markedly from the familiar image of a jail; there are no barred cells, dank, colorless corridors, or clanging steel gates...." Finally, the average length of stay in the MCC was only about 60 days.

Similarly, in *Rhodes v. Chapman,* the institution under consideration, the Southern Ohio Correctional Facility ("SOCF") was less than 10 years old. Its 63 square foot cells each have a heating and air circulation vent near the

ceiling, most have a window that inmates can open and close, and adjacent day rooms which are open between 6:30 a.m. and 9:30 p.m. Each day room contains a wall-mounted television, card tables, and chairs. Inmates can pass between their cells and the day rooms during a 10 minute period each hour. The district court described other features of the prison, including an adequate air ventilation system, cells substantially free of offensive odor, well controlled temperature in the cellblocks, lack of excessive noise, and adequate ratio of guards to inmates, etc., and summarized the physical plant as "unquestionably a top-flight, first class facility." Nevertheless, the district court found that doublecelling was cruel and unusual punishment because, among other things, SOCF was 38% over its "design capacity," and the court believed that contemporary standards of decency required each inmate to have at least 50-55 square feet of living quarters. The Court of Appeals for the Sixth Circuit affirmed on the ground that the district court's findings were not clearly erroneous. The Supreme Court reversed, holding that "In view of the District Court's findings of fact, its conclusion that double celling at SOCF constitutes cruel and unusual punishment is unsupportable. Virtually every one of the court's findings tends to *refute* respondents' claim...."

In contrast to the new, clean, and relatively comfortable facilities described in *Wolfish* and *Rhodes*, each affording the inmates ample time and space for day room activities, we find in the Indiana Reformatory the "barred cells, dank, colorless corridors, and clanging steel gates" absent from the New York MCC. More particularly, we find a 59 year old structure with inadequate ventilation, erratic heating, no cooling, and archaic electric wiring. Moreover, we find that no cells contain hot water, the plumbing is cracked and dirty to the point that it cannot be made completely clean, and the number of showers in both the cellhouses and dormitories is inadequate. Ventilation and temperature regulation in the dormitories is virtually nonexistent. The kitchen is unsanitary and cannot be sanitized because of

physical deterioration; it would be condemned were it not operated by the State. Fire protection laws are also violated routinely, with no means to place the structure in compliance therewith. The cellhouses contain no day room or equivalent space for exercise/movement/recreation, so the several hundred inmates in idle-hold and administrative segregation, including self-lockups, are required to spend from 20 to 23 hours per day locked in their cells. Medical treatment is delayed and inadequate, and there are insufficient jobs and programs to keep the prisoners busy. There is inadequate staff supervision to insure the safety of committed individuals.

It is in this environment that we find 336 double cells, providing each occupant with from 22 to 23.8 square feet of space, less that taken up by the beds, the lavatory, and the commode. All dormitories are double bunked, which allows an average of 55.8 square feet per prisoner, less that taken up by the bunks, day rooms, toilets, lavatories and showers. All witnesses, including the defendants' experts, agree that the prison is severely overcrowded and that such overcrowding, in particular the doublecelling and double bunking, coupled with all of the other conditions in evidence, has caused the confined persons unusual stress, discomfort, aggravation, and pain.

This Court finds that the present overcrowding of the institution, coupled with all of said other conditions, considered as a whole, constitutes cruel and inhuman treatment of its inmates, in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

Although we have found the defendants, in their official capacities, to be in violation of both state and federal law in their operation of the prison, it is only fair at this point to analyze the reasons for such failure to follow the law. The fault lies with elected officials of the State of Indiana. The Court knows judicially that the General Assemblies through the years, while legislating lengthened sentences

for violations of criminal law, have failed to appropriate sufficient funds to provide for normal upkeep of state penal institutions, much less to build new ones to accommodate the increased number of prisoners. Past General Assemblies have also failed to appropriate funds sufficient to permit the defendants to hire a sufficient number of qualified personnel and to establish adequate programs as contemplated by Indiana law.

The General Assembly of 1979, in enacting Public Law 120, demonstrated an awareness of the needs of persons confined in penal institutions. It also appropriated $600,000.00 for architectural design for new construction and rehabilitation of old buildings at the Reformatory. The 1981 General Assembly has appropriated $12,000,000.00 for major construction at the Reformatory, plus many millions for construction and repair at the other penal institutions. It is to be hoped that these recent positive acts evidence an increasing awareness that the State is confronted with a critical situation which must be met. Meanwhile, however, state court judges continue to sentence more and more persons to prison in response to the justifiable public demand for law and order, and prosecuting attorneys argue for longer and longer sentences. There is little or no coordination between the judicial branch of state government, which does the sentencing, the executive branch, which is responsible for the administration of the prisons, and the legislative branch, which prescribes the range of punishment and is responsible for providing all necessary funding.

Faced with increasing numbers of commitments, longer terms, inadequate physical facilities, and inadequate funding, the defendants appear to the Court to be carrying on a valiant but losing battle to accommodate those persons entrusted to their care. Certainly their failure to carry out the law in their official capacities does not mean that, as individuals, they are callous, indifferent, inept, negligent, or willfully perverse. The contrary is true. They are simply

overwhelmed despite their efforts to avoid the present crisis by developing some years ago their Master Plan — largely ignored by the General Assembly until 1981.

Certainly this Court has no objection to requiring law-breakers to serve terms of imprisonment, and neither does it believe that a prison should be a country club. However, when a person has been found to be operated in plain violation of law, the Court has the power, and it is its duty, to order appropriate remedial action. With regard to the constitutional violation the remedy must be to reduce the overcrowded population and eliminate doublecelling and double bunking at the Reformatory, all as more particularly set out in the order accompanying this Memorandum of Decision.

The defendants, in their post-trial brief, have cited cases holding that, considered separately, various of the state law violations found to exist do not constitute violations of the federal constitution. This is true. *Bono v. Saxbe*, 620 F.2d 609 (7 Cir. 1980). However, defendants do not deny that state law has been violated, merely giving lack of funds as an excuse. Lack of funds indeed explains many of said violations, but does not excuse them in the sense that no remedial action may be ordered by this Court. This Court has jurisdiction over the pendent claims based on state law and must therefore grant such relief as appears necessary from its findings of fact and conclusions of law, all as set out in the accompanying order.

Each separate order shall be deemed to constitute a conclusion of law that such relief is legally necessary, based upon the findings of fact contained in this Memorandum of Decision, and the same are incorporated herein by reference.

Dated this 7th day of May, 1982.

/s/ S. Hugh Dillin

S. Hugh Dillin, Judge

Copies to:

Donald R. Lundberg, Legal Services Organization, Suite 300, 107 North Pennsylvania Street, Indianapolis, Indiana, 46204

Stephen A. Whinston, Charles Ory, Civil Rights Division, Department of Justice, Washington, D.C., 20530

Sarah Evans Barker, United States Attorney, 274 United States Courthouse, Indianapolis, Indiana, 46204 (Harold R. Bickham, Assistant)

Linley E. Pearson, Attorney General of Indiana, 219 State House, Indianapolis, Indiana, 46204 (David Arthur, Deputy)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RICHARD A. FRENCH,	)	
MORRIS E. DOZIER,	)	
MARTIN W. BRADBERRY,	)	
HENRY C. JENNINGS,	)	
On behalf of themselves and	)	
all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	NO. IP 75-677-C
	)	
NORMAN OWENS, Individually and	)	
in his capacity as	)	
Superintendent of the	)	
Indiana Reformatory;	)	
CLOID SCHULER, In his capacity	)	
as Executive Director of	)	
the Adult Authority, Indiana	)	
Department of Correction;	)	
GORDON FAULKNER, In his	)	
capacity as Commissioner	)	
of the Indiana Department	)	
of Correction,	)	
	)	
Defendants.	)	

ORDER

The Court having this day filed its Memorandum of Decision in the above entitled cause, containing its findings of fact and conclusions of law, as follows: (H.I.), now pursuant thereto IT IS ORDERED, ADJUDGED AND DECREED that the defendants, their agents, successors in office, and all persons acting in concert or participation with them, shall comply with the following requirements:

1. Effective September 1, 1982, and thereafter, the population at the Indiana Reformatory shall not at any time exceed 1,950 persons.

2. Effective January 1, 1983, and thereafter, said population shall not exceed 1,750 persons.

3. Effective January 1, 1984, and thereafter, said population shall not exceed 1,375 persons. This figure will be modified to take into consideration any newly constructed housing, if any.

4. Effective January 1, 1983, and thereafter, no more than one inmate shall be assigned to any cell.

5. Effective January 1, 1984, and thereafter, double bunk beds shall not be used in any dormitory.

6. At the earliest possible time and by no later than September 1, 1982, the medical staff at the Reformatory shall include at least two (2) full time medical doctors, five (5) full time physicians' assistants, a full time hospital administrator, a full time pharmacist, a psychiatrist or psychiatrists for at least 40 hours per week, two (2) Masters level psychiatric social workers, one (1) Ph.D. clinical psychologist, two (2) behavioral clinicians, nine (9) medical technicians, and two (2) full time clerk typists. All medical personnel shall be fully qualified, and all newly hired personnel must be able to converse fluently in the English language. If qualified personnel cannot be obtained at present salary levels, raise the levels.

7. On September 1, 1982, the maximum restraint unit at the Reformatory shall be closed and it shall not thereafter be used to house inmates, unless by that time all cells and fixtures are completely rehabilitated, lighting equivalent to 30 footcandles per cell is furnished (controllable from within and not from without the cell), and the "box car" doors are removed.

8. The kitchen and dining room at the Reformatory shall be brought into compliance with Indiana State Board

of Health standards by no later than September 1, 1982 and maintained in accord with those standards thereafter.

9. Each inmate at the Reformatory shall have the opportunity to engage in recreation, outside his living unit, for at least 90 minutes each day. Each inmate shall be given a choice each day of taking the recreation indoors or outdoors. For inmates in general population and in self-lockup this paragraph shall be effective immediately. For inmates confined to the administrative segregation unit for disciplinary reasons, or to the maximum restraint unit, the indoor recreation may be in the living unit until January 1, 1983.

10. Defendants shall provide all inmates on self-lockup or other inmates segregated for nonpunitive reasons with access to programs, activities, and counseling available to the general population inmates. Within 30 days, defendants shall submit specific plans to comply with this paragraph, to be effective September 1, 1982.

11. Defendants shall not punish inmates by confining them to administrative segregation or the maximum restraint unit or subjecting them to other grievous loss without first according to them a hearing where the inmate is afforded the opportunity to call witnesses in his own behalf. The right to call a particular witness can only be denied when the record reflects a justifiable reason for failing to call the desired witness.

12. Defendants shall provide medical care facilities and equipment sufficient to make available adequate medical care to the inmate population. Within 30 days, defendants shall submit specific plans to comply with this paragraph by January 1, 1983. Said plans shall include development of alternative emergency care facilities, provisions for the prompt referral of inmate patients for diagnosis and treatments without nonmedical limitations on the number of daily referrals, obtaining adequate medical equipment, and either renovating the present facility or constructing a new medical facility at the Reformatory.

13. Defendants shall establish adequate and proper procedures for the delivery of medical care to the inmate population. Within 30 days, defendants shall submit specific plans to comply with this paragraph by September 1, 1982. Said plans shall include procedures for sick call open to all inmates at least six (6) days per week, delineation of responsibility and authority between the various medical personnel, provisions for close supervision of all nonphysician personnel, and provisions for daily sick call for all inmates confined to their cells.

14. Defendants shall use every effort to secure sufficient staff to safely and securely operate the Reformatory with additional attention being given to the dormitories and upper tiers of the cellblocks. The defendants will submit a plan for complying with this paragraph within 30 days with compliance to occur within 60 days thereafter.

15. As soon as practicable, but no later than September 1, 1982, the defendants shall provide each inmate with an educational, vocational or job assignment. A new inmate shall receive an assignment within 30 days of his reception at the Reformatory. However, inmates receiving disciplinary sanctions may be deprived of an assignment for up to 60 days, and any inmate removed from an assignment for inadequate performance may be assigned to idle status for a period up to 30 days.

16. Defendants shall provide substance abuse programs and mental health services and counseling for those who need and want such treatment. Within 30 days the defendants will submit a plan for compliance with this paragraph, including crisis intervention, so that compliance will occur on or before September 1, 1982.

17. Defendants shall within 60 days submit to the Court a plan which will provide for preparation and distribution of special medically prescribed diets under the supervision of qualified personnel.

18. Defendants shall not undertake the conversion of existing buildings into housing units without prior approval of this Court.

19. The preliminary injunction issued by this Court on March 5, 1982, which enjoined the use of mechanical restraints, as therein defined, is made permanent.

20. All buildings at the Reformatory requiring structural changes shall be brought into compliance with the standards of the office of the State Fire Marshal on or before January 1, 1984.

21. All operations in the various places of work and training at the Reformatory shall be brought into compliance with the regulations of the Occupational Safety and Health Administration on or before January 1, 1984. Paint spray booths and areas in which toxic glues are used shall be brought into compliance within 90 days of this date.

22. In connection with the construction and rehabilitation of buildings within the Reformatory, defendants shall give consideration to using the labor of inmates to the greatest extent practicable, at wages which are reasonable under all of the circumstances.

All of which is considered and ordered this 7th day of May, 1982.

/s/ S. Hugh Dillin

S. Hugh Dillin, Judge

Copies to:

Donald R. Lundberg, Legal Services Organization, Suite 300, 107 North Pennsylvania Street, Indianapolis, Indiana, 46204

Stephen A. Whinston, Charles Ory, Civil Rights Division, Department of Justice, Washington, D.C., 20530

Sarah Evans Barker, United States Attorney, 274 United States Courthouse, Indianapolis, Indiana, 46204 (Harold R. Bickham, Assistant)

Linley E. Pearson, Attorney General of Indiana, 219 State House, Indianapolis, Indiana, 46204 (David Arthur, Deputy)

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RICHARD A. FRENCH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CIVIL ACTION
	)	NO. IP 75-677-C
	)	
NORMAN G. OWENS, et al.,	)	
	)	
Defendants,	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Amicus Curiae.	)	

ORDER

Plaintiffs have moved the Court for a preliminary injunction enjoining the defendants, their agents, servants, employees, and all persons in active concert and participation with them from employing the use of chains, shackles, handcuffs, or any other form of hard or soft restraints on celled inmates.

The Court has heard evidence on the use of mechanical restraints on celled inmates at the Indiana Reformatory and, having fully heard the evidence presented by all parties to this proceeding, the argument of counsel, and being duly advised in the premises, now finds that a preliminary injunction should issue.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the following preliminary injunction be and hereby is issued enjoining defendants, their agents, servants, employees, and all persons in active concert and participation with them as follows:

1. For purposes of this preliminary injunction, the term "mechanical restraints" shall mean the use of hard or soft mechanical restraining devices to restrain a prisoner to his bed or in any other fashion in his cell, other than the routine use of restraints for transporting prisoners or the use of handcuffs alone to control unruly prisoners.

2. Mechanical restraints shall not be used as punishment.

3. Hard mechanical restraints shall not be used to restrain any prisoner in his cell.

4. A prisoner may be mechanically restrained by custody staff in a cell only under the following conditions.

a. No prisoner may be mechanically restrained in any unit other than the Infirmary Restraint Unit.

b. Only soft mechanical restraints may be used.

c. No prisoner may be mechanically restrained except by prior personal approval of the highest custody officer on duty at the time of restraint, including the Superintendent or, in his absence, the acting Superintendent. If the highest custody officer approving the use of mechanical restraints is anyone other than the Superintendent or, in his absence, the acting Superintendent, the decision to restrain must be approved by the Superintendent or, in his absence, the acting Superintendent, within 15 minutes of the application of mechanical restraints. The reasons for application of mechanical restraints shall be set out in writing and in detail.

d. Mechanical restraints may be applied to a prisoner, in the absence of a psychiatrist's order, for no greater period of time than two hours or a licensed psychiatrist arrives, whichever is shorter, and may be applied only in an emergency situation as the last alternative to prevent serious bodily harm to the prisoner.

e. A prisoner who is mechanically restrained without the order of a psychiatrist shall be kept under continuous observation by a trained medical staff employee, until released or a psychiatrist arrives.

f. Mechanical restraints shall be lessened and completely released at the earliest opportunity that the prisoner's behavior permits.

5. No prisoner may ever be mechanically restrained under standing orders or PRN orders of a medical doctor or psychiatrist.

6. No mechanical restraints may be applied to a prisoner in excess of the above conditions, except by order and under the direction of a psychiatrist having personal observation of the prisoner being restrained or to be restrained. No psychiatrist may order the application of mechanical restraints to a prisoner, except under the following conditions:

a. Only soft mechanical restraints may be used.

b. Mechanical restraints may not be used for a period of time longer than 24 hours, absent immediate transfer of the prisoner to an appropriate, licensed medical/psychiatric facility.

c. No prisoner may be mechanically restrained in any unit other than the Infirmary Restraint Unit.

d. A prisoner who is mechanically restrained shall be personally observed by a qualified mental health professional, as defined below, at least every 15 minutes.

e. Mechanical restraints shall be lessened and completely released at the earliest opportunity that the prisoner's behavior permits.

f. A prisoner who is mechanically restrained shall be personally observed by a licensed psychiatrist at least every 12 hours, and the order to restrain be renewed, if at all, every 12 hours after personal observation by the psychiatrist.

7. A prisoner who is mechanically restrained shall be released from restraints to go to the bathroom as needed, but in no event less often than every four hours.

8. A prisoner who is mechanically restrained shall be released from restraints in order to eat at all regular mealtimes.

9. A qualified mental health professional shall mean:

(1) a psychiatrist with three years of residency training in psychiatry;

(2) a psychologist with a doctoral degree from an accredited program;

(3) a social worker with a master's degree from an accredited program and two years of clinical experience under the supervision of a Qualified Mental Health Professional;

(4) a registered nurse with a graduate degree in psychiatric nursing and two years of clinical experience under the supervision of a Qualified Mental Health Professional.

10. Mechanical restrains shall not be used as a method of punishment; around the head or neck of a prisoner; or in any way that causes undue physical discomfort, inflicts physical pain or restricts the blood circulation or breathing.

11. No prisoner shall be mechanically restrained without being properly clothed and being provided with proper bedding.

DATE: March 5, 1982

/s/ S. Hugh Dillin

JUDGE, United States District Court

Copies to:

Donald R. Lundberg
Legal Services Organization
of Indiana, Inc.
107 North Pennsylvania Street
Suite 300
Indianapolis, Indiana 46204

David Arthur
Deputy Attorney General
219 State House
Indianapolis, Indiana 42604

Stephen Whinston
Department of Justice
Civil Rights Division
Special Litigation Section
Washington, D.C. 20530